

MARTHA HART, et al., -vs-

WORLD WRESTLING FEDERATION, et al.

MARK SWALES

APRIL 10, 2000

JOHN M. BOWEN & ASSOCIATES - (816) 421-2876

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

AT KANSAS CITY

MARTHA HART, et al.,)
)
Plaintiffs,)
)
vs.) No. CV99-210774
)
WORLD WRESTLING FEDERATION,)
et al.,)
)
Defendants.)	

THE VIDEOTAPED DEPOSITION OF MARK SWALES, produced, sworn and examined on behalf of the Plaintiffs, pursuant to Notice, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of Monday, April 10, 2000, at the law offices of Bryan Cave, 33 Cannon Street, Suite 600, in the City of London, England, before me,

SARAH A. MILLER, C.C.R.
of
JOHN M. BOWEN & ASSOCIATES,
Shorthand Reporters,

a Notary Public in a certain cause now pending in the Circuit Court of Jackson County, Missouri, wherein MARTHA HART, et al., are the Plaintiffs, and WORLD WRESTLING FEDERATION, et al., are the Defendants.

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Also present: David Lombardo, Videographer

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties and the witness that presentation of this deposition to this witness is hereby waived.

It is hereby further stipulated and agreed by and between the respective parties hereto that said deposition shall be signed by the witness before the time of trial of this case.

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1	It is hereby further stipulated and agreed
2	by and between counsel for the respective parties
3	hereto, that the deposition of the witness may be
4	signed before a Notary Public other than the
5	Notary before whom the deposition was taken.
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<p style="text-align: right;">Page 9</p> <p>1 responsive documents then we think they should 2 be produced. If not, then we can explore that 3 with the witnesses today.</p> <p>4 MR. ROBB: Anybody else before we go 5 on the video? I didn't mean to interrupt you. 6 I just thought we would save the video. I'm not 7 sure how much it has.</p> <p>8 (Off the record).</p> <p>9 MARK SWALES</p> <p>10 of lawful age, being produced and sworn to tell the 11 truth, the whole truth and nothing but the truth, 12 deposeth and saith:</p> <p>13 EXAMINATION</p> <p>14 By MR. ROBB:</p> <p>15 Q. Good morning.</p> <p>16 A. Good morning.</p> <p>17 Q. Would you tell us your full name, please, sir.</p> <p>18 A. John Mark Swales.</p> <p>19 Q. And what is your employment, Mr. Swales?</p> <p>20 A. I am finance director of Lewmar Limited.</p> <p>21 Q. Where is Lewmar Limited located?</p> <p>22 A. In Havent England.</p> <p>23 Q. Havant, Hampshire, England?</p> <p>24 A. Yes.</p> <p>25 Q. And are we going forward with this proceeding</p>	<p style="text-align: right;">Page 11</p> <p>1 It does appear that it was one of our snap 2 shackles, yes.</p> <p>3 Q. And I apologize if I wasn't clear. I didn't 4 mean to imply that you did know exactly what 5 happened. But I think what I'd like to at least 6 establish is that to the best of your knowledge 7 from information that you have, Mr. Swales, does 8 it appear to you on behalf of Lewmar Limited 9 that one of your snap shackle devices in some 10 manner was part of the rigging apparatus for the 11 stunt?</p> <p>12 A. Yes, it is, sir.</p> <p>13 Q. Well, that's what I'm here to talk about, but 14 before we get into that specifically, could I 15 ask you to tell us a little bit about your 16 company, Lewmar.</p> <p>17 A. Lewmar Limited manufactures deck hardware, 18 largely for sailboats.</p> <p>19 Q. Did you say for sailboats?</p> <p>20 A. Yes. We do three main ranges, which is the 21 winch, windlass, which basically you would use 22 to hoist a sail or adjust your sails. We do 23 hatches and we do deck hardware, which is the 24 pulley blocks used to loop around. Formed in 25 around 1946 to '47, we are one of the leading</p>
<p style="text-align: right;">Page 10</p> <p>1 this morning on April 10, 2000, in London, 2 England?</p> <p>3 A. Yes, we are.</p> <p>4 Q. All right, sir. I'd like to ask you a few 5 questions concerning your company, and I 6 understand that you have been designated on 7 certain areas with respect to and to speak on 8 behalf of Lewmar. Is that correct?</p> <p>9 A. That's correct, sir.</p> <p>10 Q. All right. Generally speaking, would those 11 matters be involving finance and administrative 12 details with respect to the Lewmar Company?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. Mr. Swales, my name is Gary Robb, and 15 along with my co-counsel here, Pam Fischer, we 16 represent the Hart family in connection with a 17 matter that occurred on May 23, 1999, at Kemper 18 Arena in Kansas City, Missouri.</p> <p>19 And did Lewmar Limited manufacture or 20 produce to the best of your knowledge a snap 21 shackle device which you have information was 22 used as part of rigging for a wrestling show 23 involving Owen Hart on that date?</p> <p>24 A. We don't know precisely what happened on that 25 date. We have only seen photograph evidence.</p>	<p style="text-align: right;">Page 12</p> <p>1 suppliers of deck hardware. Prominent position 2 in the winch and hatch markets.</p> <p>3 Q. Would it be correct, Mr. Swales, that the 4 predominant, if not entire, focus of your sales 5 is within the marine industry?</p> <p>6 A. Yes, it would.</p> <p>7 Q. Okay. So to whom do you sell your products 8 predominantly then, sir?</p> <p>9 A. The bulk of our products are sold to the OEM's, 10 to the boat manufacturers. We also sell through 11 distributors and ultimately to the end user, to 12 the sailor.</p> <p>13 (The reporter marked Deposition 14 Exhibit No. 10 for identification.)</p> <p>15 Q. (By Mr. Robb) Mr. Swales, let me show you what 16 I'm going to -- I am going to mark this later, 17 but let's refer to this as Exhibit 10.</p> <p>18 A. Okay.</p> <p>19 Q. Because I don't want to block it. But I want to 20 show you what I intend to mark as Exhibit 10, 21 and I'm going to ask if you could identify this 22 object, if you wouldn't mind. And I want to 23 make clear that I don't mean to get into any of 24 the technical or production details because I 25 understand, or the engineering details, because</p>

	Page 13		Page 15
1	I understand that Mr. Gibson is going to be	1	Mr. Swales, is this the spike that you referred
2	addressing those.	2	to --
3	A. That's correct.	3	A. That is what we --
4	Q. But I would like to ask if you can identify this	4	Q. -- ten seconds ago.
5	object.	5	A. Yes. That is what we call a fid, yes.
6	A. Yes. This is one of the Lewmar trigger latch	6	MR. HARRIS: Just for the record,
7	shackles.	7	make sure Mr. Robb completes his question before
8	Q. Okay. Would it also be referred to as a snap	8	you respond.
9	shackle or trigger latch?	9	A. Yes. You put it in and release it.
10	A. It's a trigger latch. A snap shackle is a	10	Q. (By Mr. Robb) Is the intent or design generally
11	generic phrase for any number of styles of	11	speaking, Mr. Swales, of the spike to keep one's
12	shackle.	12	hands away from the instrument under load?
13	Q. What is that used for, sir?	13	A. Yes, it is.
14	A. This shackle is particularly used for opening	14	Q. And why is that?
15	under load. It's designed to open under load,	15	A. Because when it's under load there is very
16	and it would be used on the spinnaker of a	16	little pressure here, and things can fly back,
17	racing sailboat.	17	and also the arm can flick and cut your fingers.
18	Q. Now, did you say open under load?	18	Q. Have you seen that trigger latch device used in
19	A. Yes.	19	the yachting application?
20	Q. To open under load?	20	A. I have not.
21	A. Yes.	21	Q. Have you ever personally observed with your own
22	Q. And I don't want to get overly technical, but	22	eyes this particular product being used in any
23	just in a very simple fashion could you explain	23	other application?
24	to the jury what that means?	24	A. I have not.
25	A. It means that if you are -- if you see a	25	(The reporter marked Deposition)
	Page 14		Page 16
1	sailboat racing with a spinnaker.	1	Exhibit No. 29 for identification.)
2	Q. What is a spinnaker?	2	Q. (By Mr. Thompson) Let me show you, Mr. Swales,
3	A. Right. I'm not a sailor. I will make that	3	what I have marked and what you have provided.
4	clear as well. A spinnaker is what the sailor	4	It's Exhibit 29. And ask if you can identify
5	would use at the front of the yacht, which will	5	that for us please, sir.
6	come out both --	6	A. That's a copy of the 1998 Lewmar catalog.
7	Q. In the front of the yacht?	7	Q. And does it have reference to Exhibit 10, sir?
8	A. Front of the yacht. When you are turning the	8	A. Yes, it does.
9	yacht, you need to take that down quickly if	9	Q. And would you hold it so that the camera can see
10	you're racing, so the shackle is released under	10	the reference, and point out to the specific one
11	load, so it can be removed quickly out of the	11	that we are talking about.
12	way to get under wind to sail on.	12	A. (Witness complies.) I believe it is this one.
13	Q. Now, how is it affixed with, or how is it	13	Q. Okay. And what is the reference on that
14	attached or opened before a load is applied to	14	exhibit, sir?
15	the instrument, sir?	15	A. 19512000.
16	A. You can open it by putting -- if it's not under	16	Q. And that is the catalog number for the part?
17	load, you can open it by putting your finger in	17	A. Yes.
18	here and releasing it or by pulling this plunger	18	Q. And on the first page of the catalog, could you
19	and releasing it. If it's under load, there's a	19	hold that up for the camera as well. And it
20	sign under it that says use spike, which is a	20	indicates the company name -- well, first at the
21	metal rod you put in here to press down.	21	top it has the date, 1998?
22	(The reporter marked Deposition	22	A. Yes.
23	Exhibit No. 78 for identification.)	23	Q. And then the company name, and I don't know if
24	Q. (By Mr. Robb) All right. Let me show you what	24	our camera can get it, but can you read what it
25	we intend to be marked Exhibit 78, and ask you,	25	says underneath your company's name, sir?

<p style="text-align: right;">Page 17</p> <p>1 A. Marine equipment for the world's yachts. 2 Q. Marine equipment for the world's yachts? 3 A. That is correct. 4 Q. All right. Mr. Swales, have you or anyone else 5 within the Lewmar Company ever indicated in a 6 catalog, an advertisement or any promotional 7 material that this product can be used for a 8 stunt? 9 A. We most certainly have not. 10 Q. Would you have known about that, sir, if there 11 had been any indication to that effect? 12 A. I would have. 13 Q. In fact, the contrary is true, is it not, sir? 14 MR. THOMPSON: I object to the form 15 of the question. 16 A. Sorry. Could you explain? 17 Q. (By Mr. Robb) Certainly. In fact, your company 18 has made it very clear that these products are 19 not to be used outside of marine application, 20 have you not? 21 MR. THOMPSON: I object to the form 22 of the question. 23 A. That is correct, sir. 24 Q. (By Mr. Robb) And have you sent out memoranda 25 and other public information disseminated to</p>	<p style="text-align: right;">Page 19</p> <p>1 to lift or lower or suspend, lift, lower or 2 suspend, a human being at any height, sir? 3 A. It absolutely was not, sir. 4 (The reporter marked Deposition 5 Exhibits Nos. 30 and 31 for 6 identification.) 7 Q. (By Mr. Thompson) in that regard, let me show 8 you what has been marked as Plaintiff's Exhibit 9 31, and do you recognize this, sir, as the 10 original copy of the European Patent Application 11 No. 93-300953.5 dated September 20, 1988, 12 approving the application for patent of the 13 shackle? 14 A. Yes, it is, sir. 15 Q. I'm sorry? 16 A. Yes. 17 Q. And I want to bring to your attention the third 18 paragraph of the patent application, and if you 19 could just take a moment and take your time to 20 familiarize yourself with that third paragraph. 21 Let me know when you have had a chance to review 22 it. 23 A. (Witness complies). Okay. 24 Q. Mr. Swales, could I trouble you to read that 25 third paragraph for me, if that would be all</p>
<p style="text-align: right;">Page 18</p> <p>1 that effect? 2 A. We have, sir. 3 Q. Have you ever in any written material condoned 4 or ratified or approved the use of this device 5 in any kind of a stunt, any kind of a stunt? 6 A. We have not, sir. 7 Q. Would you know about that, sir? 8 A. Yes, I would. 9 Q. Are you in a position, in terms of your position 10 with the Lewmar Company, to know or to be 11 notified if anyone would ask for permission or 12 approval to use it in that way? 13 A. Yes, I am. 14 Q. If they had, what would have been your company's 15 response, sir? 16 MR. THOMPSON: I object to the form 17 of the question. 18 A. We would absolutely decline permission to use 19 it. We would have made it very clear that this 20 object, this product, is not designed for that 21 purpose. 22 Q. (By Mr. Robb) You say not designed for that 23 purpose? 24 A. That's correct. 25 Q. Was it originally designed for any application</p>	<p style="text-align: right;">Page 20</p> <p>1 right. 2 MR. HARRIS: That's fine. 3 A. These shackles are used especially in the marine 4 sports, such as yachting, and it has become 5 important to develop a capacity for automatic 6 self-latching, which is entirely secure but 7 easily released when necessary. 8 Q. (By Mr. Robb) Anywhere, anywhere in that patent 9 application, Mr. Swales, is there any reference 10 to the use of that instrument in stunt work? 11 MR. THOMPSON: I object to the form 12 of the question. The document speaks for 13 itself. 14 A. I am not aware that it does. 15 Q. (By Mr. Robb) Please satisfy yourself whether 16 or not it does. 17 A. No, sir, it does not. 18 Q. You said it does not? 19 A. No. 20 Q. Just so I'm clear, is there any reference in any 21 portion of the original patent application that 22 this product can or was envisioned for use in 23 any type of stunt? 24 MR. THOMPSON: I object to the form 25 of the question. The document speaks for</p>

Page 21	Page 23
1 itself, and it has been used, and has been asked 2 and answered. 3 Q. (By Mr. Robb) I just want to make sure, sir. 4 A. It has not. 5 Q. Has there been, to your knowledge, any 6 subsequent patent application to seek to have 7 this particular instrument, this trigger latch 8 device which your company produces used in the 9 stunt industry? 10 A. Not to my knowledge sir. 11 Q. And you would be in a position to know, would 12 you not? 13 A. Yes, I would. 14 Q. Now, let me show you what we have marked as 15 Exhibit 30, and can you identify that for us, 16 sir. 17 A. This is from the Lewmar 1999 catalog. 18 Q. You say the 1999? 19 A. Yes. 20 Q. Okay. And can you for a moment hold up for our 21 camera the front page of that catalog. 22 A. (Witness complies). 23 Q. Now, that is from the 1999 catalog? 24 A. Yes, sir. 25 Q. And again, would you read what the indication is	1 Q. And does it give any indication that this 2 particular product can be used as part of the 3 rigging, I'm sorry, as part of the rigging of a 4 stunt? 5 A. No, it does not. 6 (The reporter marked Deposition 7 Exhibits Nos. 124 through 126 for 8 identification.) 9 Q. (By Mr. Robb) Let me show you what has been 10 marked as Exhibit 124, and ask if you are 11 familiar with that document, sir. 12 A. I am familiar with it, sir. 13 Q. And what was the purpose of issuing that 14 memorandum, Mr. Swales? 15 A. A company in Germany had used one of our trigger 16 latch shackles in some way -- well, sorry. We 17 believe one of our shackles, we are not sure 18 whether it was a trigger latch or plunger 19 shackle, and it was something to do with an 20 elasticated bungee jump, and we issued this to 21 our branch in Holland, which had sold the 22 shackles through third parties to whoever did 23 this stunt, informing them they should not be 24 doing that, and to pass it down the line that 25 the shackles are not designed for that kind of
Page 22	Page 24
1 with respect to your product line, sir. 2 A. Marine equipment for the world's yachts. 3 Q. And is there attached to the cover page another 4 document? 5 A. Yes, there is, sir. 6 Q. And is there any reference to the trigger latch 7 device on the attached document? 8 A. Sorry, to this trigger latch? 9 Q. Yes. 10 A. There is no reference here to the Lewmar trigger 11 latch shackle. 12 Q. On the attachment there. 13 A. No. These are Nordsman Gibb shackles, not 14 Lewmar. 15 Q. In the 1999 catalog there is also reference to 16 this trigger latch, is there not? 17 A. Yes. Sorry. It's here. 18 Q. Okay. And that's on the bottom of the sheet? 19 A. Yes. 20 Q. So let me just put that again to you, 21 Mr. Swales. The attachment to this Exhibit 30, 22 the page attached, does make reference to the 23 trigger latch shackle manufactured by Lewmar 24 which we have been discussing, does it not? 25 A. Yes, it does.	1 purpose. 2 Q. Prior to the issuance of this memorandum, 3 Mr. Swales, had Lewmar or anyone on behalf of 4 Lewmar indicated that Lewmar approved or 5 ratified the use of any of their products in 6 bungee jumping? 7 A. Certainly not. 8 Q. If anyone had called you or someone at Lewmar 9 and said we want to use this or some other latch 10 in a bungee jump, would you have said sure? 11 A. We certainly would not. 12 Q. Would not? 13 A. No. 14 Q. Why not? 15 A. I'm tempted to say lunacy to do it, but I 16 wouldn't do a bungee jump either. It is not 17 designed for that kind of purpose. 18 Q. Now, when you found out that it had been used in 19 that manner, Mr. Swales, did the company take 20 action? 21 MR. THOMPSON: I object to the form 22 of the question. 23 A. We took action since we stopped our agent 24 supplying those. We never found out the full 25 details of what happened. All we had had was a

<p style="text-align: right;">Page 25</p> <p>1 phone call, I believe, from the German police. 2 And there was never a claim and as I said we 3 weren't absolutely certain which of our products 4 they had used.</p> <p>5 Q. You sell to the marine industry? 6 A. Yes, sir.</p> <p>7 Q. Products for marine application? 8 A. Yes, sir.</p> <p>9 Q. And Mr. Swales, you nor any other manufacturer 10 can possibly police as best you can the use to 11 which people may improperly make of your 12 product, can you, sir?</p> <p>13 MR. THOMPSON: I object to the form 14 of the question.</p> <p>15 MR. SULLIVAN: Join in that 16 objection. Gary, can we agree that objections 17 for one stand for all?</p> <p>18 MR. ROBB: Certainly. We had that 19 for all.</p> <p>20 MR. THOMPSON: Does the camera 21 include this? I think the proper way is focus 22 it on the witness. We have had this battle 23 before. The rules in Missouri are clear. The 24 videographer --</p> <p>25 MR. ROBB: If you have an objection,</p>	<p style="text-align: right;">Page 27</p> <p>1 to interrupt him, you know, is just not going to 2 be a good record if we have to edit it. You are 3 over him. I can't work it that way. So go 4 ahead and make the objection. Take as much time 5 as you like. Then I would ask -- I had her read 6 it back subject to the objection.</p> <p>7 MR. THOMPSON: I didn't know it was 8 subject to the objection. As long as we have 9 that agreement.</p> <p>10 MR. ROBB: Certainly, absolutely. 11 Let's try it again. Part of that is my fault, 12 because I may not have made it clear that it was 13 subject to the objection. But subject to the 14 objection, so that we can have a clear record, 15 if you could go ahead and put the question back 16 to him. Thank you.</p> <p>17 (The reporter read back the following: 18 And Mr. Swales, you nor any other manufacturer 19 can possibly police as best you can the use to 20 which people may improperly make of your product, 21 can you, sir?)</p> <p>22 A. We cannot police the use people make of our 23 product, no, sir.</p> <p>24 Q. (By Mr. Robb) In your catalog you indicate that 25 the product is to be used for marine</p>
<p style="text-align: right;">Page 26</p> <p>1 make it.</p> <p>2 MR. THOMPSON: That is the objection.</p> <p>3 MR. ROBB: Go ahead and proceed, 4 David, in the manner to which you feel is 5 appropriate. Let's have the original question 6 put back to the witness, so we can have a clear 7 record.</p> <p>8 MR. ROBB: Before you do, sorry. To 9 the extent I am holding a exhibit and asking him 10 to hold it making reference to an exhibit, I 11 certainly want the exhibit shown. You know, if, 12 God forbid, if I'm in the video, then sobeit. 13 Go ahead and proceed.</p> <p>14 MR. THOMPSON: To that extent I 15 understand that.</p> <p>16 (The reporter read back the following: 17 And Mr. Swales, you nor any other manufacturer 18 can possibly police as best you can the use to 19 which people may improperly make of your product, 20 can you, sir?)</p> <p>21 A. It would be impossible for us to police the use.</p> <p>22 MR. THOMPSON: Same objection.</p> <p>23 MR. ROBB: Well, now, Bob, there is 24 no reason to do that. You already made the 25 objection. The objection was clear, fine. And</p>	<p style="text-align: right;">Page 28</p> <p>1 application?</p> <p>2 A. That is correct.</p> <p>3 Q. When you found out that it wasn't in a 4 particular instance, you told people?</p> <p>5 A. We took action to stop those people using our 6 products and to stop our agents from supplying 7 them.</p> <p>8 Q. Nothing else you can do, is there, Mr. Swales?</p> <p>9 A. Not at all.</p> <p>10 MR. SULLIVAN: I object.</p> <p>11 MR. THOMPSON: I object to the form 12 of the question.</p> <p>13 MR. WALDECK: Objection.</p> <p>14 MR. ROBB: Subject to the objection, 15 I think they may have run over. Subject to 16 those objections, let me put that question to 17 you again. And wait till she finishes, pause, 18 and then if you would, give your answer.</p> <p>19 (The reporter read back the following: 20 Nothing else you can do, is there, Mr. Swales?)</p> <p>21 A. No, there is not, sir.</p> <p>22 Q. (By Mr. Robb) Let me show you what's been 23 marked as Exhibit 125, and let me ask you, sir, 24 if you could identify that.</p> <p>25 MR. WALDECK: Mr. Robb, could we have</p>

Page 29 1 the Bates number on that document if you have it 2 just for reference? 3 MR. ROBB: Certainly. 4 MR. HARRIS: The Bates number is LL 5 0144. 6 MR. WALDECK: I'm sorry to interrupt. 7 Thank you. 8 Q. (By Mr. Robb) Have you had a chance to look at 9 it? 10 A. Yes, I have. 11 Q. What is the subject matter of that document, 12 sir? 13 A. This is a document giving notice regarding 14 non-marine applications for our products. 15 Q. And what was the notice given in that document, 16 sir? 17 A. Do you want me to read it out? 18 Q. The portion that you believe is relevant, yes, 19 please, sir. 20 A. Probably it is asking that any non-marine 21 application for our products the user obtains 22 authority from ourselves before using it for 23 whatever application they are to use it for. 24 Q. Now, with respect to that, requesting 25 permission, has anyone at Lewmar ever granted	Page 31 1 A. This is a memorandum issued by our Dutch 2 subsidiary following the accident and again it 3 is reiterating that we should not be using in 4 this particular case trigger latch shackles for 5 non-marine use. 6 Q. Now, just so I'm clear, when you say our 7 accident, does that memorandum make specific 8 reference to and is it intended to make specific 9 reference to the May 23, 1999, incident at the 10 Kemper Arena in Kansas City, Missouri, relating 11 to the death of Owen Hart? 12 A. Yes. 13 MR. THOMPSON: I object to the form 14 of the question. 15 A. Yes, it does, sir. 16 Q. (By Mr. Robb) And what specific response did 17 the Lewmar Limited Company make with reference 18 to that incident, sir? 19 A. This memorandum was following one issued by 20 Lewmar Limited to all our subsidiaries informing 21 them that there had been a serious accident and 22 that permission for any non-marine use of any of 23 our products had to be obtained from Havant, 24 from head office, before they could be sold. 25 Q. Now, have any Lewmar personnel at any level
Page 30 1 permission for the use of a trigger latch 2 shackle to lift, suspend or lower a human being 3 from any height? 4 A. They have not, sir. 5 Q. Would such permission be granted by the Lewmar 6 Limited Company, Mr. Swales? 7 A. It would not, sir. 8 MR. THOMPSON: I object to the form 9 of the question. Calls for speculation. 10 Q. (By Mr. Robb) I'm sorry. Let me just put it to 11 you again, subject to the objection. Would such 12 permission or authority be granted by the Lewmar 13 company, Mr. Swales? 14 A. It would not be, sir. 15 Q. Why not? 16 A. Because the product is not designed for that 17 use. It is designed as a marine shackle for use 18 with a spinnaker. 19 Q. Let me show you what has been marked as Exhibit 20 126. And as we have before, would you just take 21 a moment as review it and see if you are 22 familiar with it. 23 A. (Witness complies). Okay. 24 Q. What is the subject matter of that memorandum, 25 sir?	Page 32 1 within your company, Mr. Swales, ever received a 2 request from anyone, from the WWF or stunt 3 persons employed by or hired by the WWF to use 4 any of your products at any time for any reason? 5 A. None that I'm aware of, sir, no. 6 Q. And you would be in a position, given your 7 position in the company -- 8 A. Yes. 9 Q. -- to know about that, would you not, sir? 10 A. Yes, I would, sir. 11 MR. THOMPSON: I object to the form 12 of the question. 13 Q. (By Mr. Robb) I'm sorry. You have to go ahead. 14 A. Yes, I would say. 15 Q. Mr. Swales, if such a request had been 16 forthcoming in whatever form, in writing, via 17 facsimile, telegram, telephone, whatever, 18 whatever the form of communication, would you 19 tell us what the response of Lewmar Limited 20 would be. 21 MR. THOMPSON: I object to the form 22 of the question. Calls for speculation. 23 Q. (By Mr. Robb) Well, does this require you to 24 speculate or guess as to the answer in any 25 respect, sir?

<p style="text-align: right;">Page 33</p> <p>1 A. No, it does not, sir. 2 Q. Are you absolutely certain what the response 3 would have been? 4 A. I am absolutely certain. 5 Q. And would you tell the jury what the response 6 would have been? 7 MR. THOMPSON: Same objection. 8 A. We would not give permission to use a trigger 9 latch shackle to lift or suspend any person. 10 Q. (By Mr. Robb) Why not? 11 A. Because it is not designed for that purpose. 12 Q. Let me show you what has been marked as Exhibit 13 246, and as we have before take a moment and 14 familiarize yourself with that document, sir. 15 MR. THOMPSON: What is the Bates 16 number on this? 17 MR. ROBB: I'm sorry? 18 THE WITNESS: LL 0218. 19 Q. (By Mr. Robb) Have you had a chance to look at 20 it? 21 A. Yes, I have. 22 Q. What is the subject matter of that document, 23 sir? 24 A. This is a memorandum following the accident in 25 which Mr. Hart died. It preceded the previous</p>	<p style="text-align: right;">Page 35</p> <p>1 Category No. 1, about halfway through Category 2 No. 1, where it starts intended actual market, I 3 believe the best person for that would be 4 Mr. Townsend, Mr. Matthew Townsend. 5 MR. ROBB: Fine. Well, then if it's 6 all right with you, Mr. Swales, we will not go 7 into that. We are going to save that for 8 Mr. Townsend. 9 A. Okay. 10 Q. (By Mr. Robb) Is that agreeable? 11 A. Yes, it is, sir. 12 Q. Now, with respect to information relating to the 13 custodian or location of particular documents, 14 let me put this question to you. Are there any 15 documents at all within the Lewmar Limited 16 Company which could even be interpreted as 17 granting permission for use of a trigger latch 18 shackle to suspend a human being at any height? 19 MR. THOMPSON: I object to the form 20 of the question. 21 A. There are not, sir. 22 Q. (By Mr. Robb) Would you be in a position to 23 know that, sir? 24 A. I would, sir. 25 Q. And I understand that you are the official</p>
<p style="text-align: right;">Page 34</p> <p>1 memorandum and it is basically telling, all of 2 us, all of our distributors, to obtain 3 permission for non-marine use of any of our 4 products. 5 Q. Similar message as was in the other document? 6 A. Yes. 7 Q. Fair to say? 8 A. Yes. 9 Q. Have each of the documents which I have shown 10 you, Exhibits 29, 31, 30, 126, 125 and 124 been 11 prepared in the ordinary course of business of 12 the Lewmar Limited Company, sir? 13 A. Yes, they have, sir. 14 Q. And are these to the best of your knowledge 15 accurate copies of the original documents 16 prepared by Lewmar? 17 A. They are, sir. 18 Q. Issued by the company? 19 A. Yes, sir. 20 Q. Now, as the finance director we have -- it's 21 been indicated to us that one of the areas for 22 which you are going to be speaking on behalf of 23 Lewmar is the, and I quote, intended actual 24 market for the company's products. Is that -- 25 MR. HARRIS: Mr. Robb, in regard to</p>	<p style="text-align: right;">Page 36</p> <p>1 designee on behalf of Lewmar to speak to the 2 location of all such documents within the 3 company. Would that be correct? 4 A. Yes. That is correct, sir. 5 Q. And to the best of your knowledge there is not a 6 single document that has ever been issued by 7 Lewmar by which one could say that this device 8 could be used to suspend a person? 9 MR. THOMPSON: I object to the form 10 of the question. 11 A. There is not, sir. 12 Q. (By Mr. Robb) You say there is not? 13 A. I do, sir. 14 Q. Was there any indication to your knowledge, 15 Mr. Swales, that the trigger latch shackle that 16 was used in Kansas City for the Owen Hart stunt 17 broke? 18 A. No, sir. 19 Q. Malfunctioned? 20 A. No, sir. 21 MR. THOMPSON: I object to the form 22 of the question. 23 Q. (By Mr. Robb) Operated in any way other than it 24 was intended to be used for? 25 A. Absolutely not, sir.</p>

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<p>1 Q. In fact, isn't it true that the very design of 2 this product is to allow for a quick and easy 3 release under load?</p> <p>4 A. That is correct, sir.</p> <p>5 Q. That's the design of the product, is it not?</p> <p>6 A. That is correct.</p> <p>7 Q. And it indicates in fact you can't put it on any 8 clearer. That is actually -- what do you call 9 that in there, inscribed in the metal? What 10 would you call that?</p> <p>11 A. It's inscribed or stamped into the metal.</p> <p>12 Q. Stamped into the metal, what does it say there?</p> <p>13 A. Lift spike to open -- sorry, use spike to open.</p> <p>14 Q. You say use spike to open. Now, just so I'm 15 clear, is that on both sides, sir?</p> <p>16 A. Yes, it is.</p> <p>17 Q. The language where it says use spike to open is 18 on both sides?</p> <p>19 A. Yes, it is, sir.</p> <p>20 Q. And by spike, we are referring to this device?</p> <p>21 A. That device or something similar, yes.</p> <p>22 Q. So in other words when it's under load -- and I 23 guess, under load, that would mean when there is 24 some kind of tension or pressure on it.</p> <p>25 A. Yes, sir.</p>	<p>1 MR. THOMPSON: I object to the form 2 of the question. It is an improper question to 3 ask a man that has not been certified as an 4 expert in this area.</p> <p>5 Q. (By Mr. Robb) You may answer, sir.</p> <p>6 A. The trigger latch shackle is not designed to 7 lower people from 78 feet or 50 feet or 20 feet.</p> <p>8 Q. Was it a proper use of that device on May 23, 9 1999?</p> <p>10 A. Totally improper.</p> <p>11 MR. THOMPSON: Same objection.</p> <p>12 A. It was a totally improper use of that product.</p> <p>13 MR. ROBB: Mr. Swales, on behalf of 14 my clients I thank you for your time here in 15 responding to our questions this morning, and I 16 have no further questions for you. Thank you, 17 sir.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. THOMPSON: As a procedural 20 manner, do you want to continue with this 21 witness and use it as our cross in response to 22 our cross-examination and finish with this witness?</p> <p>23 MR. ROBB: Yes.</p> <p>24 MR. HARRIS: Let's finish this 25 witness.</p>
Page 38	Page 40
<p>1 Q. It says use spike to open, but it doesn't say 2 that you can use anything else, does it, sir?</p> <p>3 A. It does not, sir.</p> <p>4 Q. Why?</p> <p>5 A. Because we would not recommend to use it any 6 other way. It would be dangerous to do so.</p> <p>7 Q. It would be dangerous to do so?</p> <p>8 A. In normal -- in the marine purpose you would 9 certainly risk giving yourself a nasty, 10 cracked-around hand.</p> <p>11 Q. Has the Lewmar company ever promoted or 12 recommended any of its products for use in the 13 stunt industry?</p> <p>14 A. It has not.</p> <p>15 Q. Has the Lewmar Company ever promoted or 16 recommended any of its products to suspend human 17 beings at any height?</p> <p>18 A. It has not, sir.</p> <p>19 Q. Given your experience and your position with the 20 company, sir, do you have an opinion to a 21 reasonable degree of certainty whether the 22 Lewmar trigger latch shackle was proper for use 23 in lowering Owen Hart from a height of 78 feet 24 at a wrestling show in Kansas City, Missouri, on 25 May the 23rd, 1999?</p>	<p>1 (Recess).</p> <p>2 EXAMINATION</p> <p>3 By MR. THOMPSON:</p> <p>4 Q. Sir, my name is Bob Thompson, and with me is 5 Julie Cox, and we represent the WWF defendants 6 in this case. What is your education?</p> <p>7 A. Sorry?</p> <p>8 Q. Your education.</p> <p>9 A. I took a degree in business in studies, and I'm 10 a Qualified Certified Accountant.</p> <p>11 Q. So you are an accountant?</p> <p>12 A. Yes.</p> <p>13 Q. And your role in the company?</p> <p>14 A. I am finance director.</p> <p>15 Q. Do you have any engineering or mechanical 16 training?</p> <p>17 A. None whatsoever.</p> <p>18 Q. So when you were rendering opinions about the 19 appropriateness of the use of the trigger latch 20 shackle, Exhibit 10, for various -- for stunts, 21 do you have any training that you believe makes 22 you qualified to give that type of opinion?</p> <p>23 MR. ROBB: Let me just object to the 24 form of the question to the extent that I think 25 that misstates what we identified him as and</p>

<p style="text-align: right;">Page 41</p> <p>1 that is as an expert in the use, design, 2 manufacture, promoted and recommended use of 3 Lewmar products, which I think he would be 4 qualified as an expert in, including but not 5 limited to proper and designed intended use and 6 operation, improper and non-recommended uses 7 which would not require any engineering or 8 technical, to me. That is for the record. 9 Please go ahead and answer.</p> <p>10 Q. (By Mr. Thompson) Do you have any education in 11 the design of products like the trigger latch 12 shackle?</p> <p>13 A. I do not, sir.</p> <p>14 Q. Any mechanical engineering that would help you 15 analyze whether or not a given use is improper 16 or proper?</p> <p>17 MR. ROBB: Let me just object again 18 to the extent that he is an expert as to the use 19 and appropriate use of his own products by 20 definition, since it's his product. You may 21 answer.</p> <p>22 A. I do not, sir.</p> <p>23 Q. (By Mr. Thompson) Have you undertaken any 24 studies that you believe qualify you to render 25 an opinion as to whether or not a certain use of</p>	<p style="text-align: right;">Page 43</p> <p>1 A. I wouldn't know what you would call it in the 2 United States. 3 Q. But when you say removal -- 4 A. Remove furniture from one house to another house 5 or whatever, yes. 6 Q. How long were you with the removal company? 7 A. About six months. 8 Q. Did you graduate with a degree? Did you finish 9 college? 10 A. Yes, sir. 11 Q. After the six months as an accountant with the 12 removal company, what was your next job? 13 A. I joined a transport company. 14 Q. And what did you do for the transport company? 15 A. I was initially assistant to the finance 16 director, and later became finance director. 17 Q. What does a transport company do? 18 A. Haulage, trucking. 19 Q. Trucks. How long were you with the transport 20 company? 21 A. Eight, nine years. 22 Q. So 1994 or '95? 23 A. No, no, no. This was when I graduated with my 24 degree, not when I finally passed my accountancy 25 exams.</p>
<p style="text-align: right;">Page 42</p> <p>1 the shackle is proper?</p> <p>2 A. Through my experience it's not purely financial, 3 because I used to run a company called Nordsman 4 Gibb which also manufactured snap shackles.</p> <p>5 Q. Were you an engineer in connection with that 6 company?</p> <p>7 A. No, sir.</p> <p>8 Q. What did you do for that company?</p> <p>9 A. I was commercial director.</p> <p>10 Q. What does commercial director do?</p> <p>11 A. In this particular case I effectively ran the 12 business for three years.</p> <p>13 Q. Let's, just so we've got a clear chronology, 14 let's start back. When did you graduate with 15 your degree in accounting?</p> <p>16 A. Around 1985.</p> <p>17 Q. And what was your first job after college?</p> <p>18 A. My first job after college I was a company 19 accountant.</p> <p>20 Q. For what company?</p> <p>21 A. It was a small removals company.</p> <p>22 Q. What is a removals company?</p> <p>23 A. They remove furniture.</p> <p>24 Q. A moving company in the -- would it be a moving 25 company?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. When did you pass your accountancy exam?</p> <p>2 A. In '85. I passed my degree in '78, '79.</p> <p>3 Q. Okay. I understand. So you are nine years with 4 the transport company?</p> <p>5 A. Yes.</p> <p>6 Q. All in the finance and accounting?</p> <p>7 A. Yes.</p> <p>8 Q. And then after the transport company what did 9 you do?</p> <p>10 A. I joined a company that manufactured ladies' 11 hosiery.</p> <p>12 Q. How long were you with the ladies' hosiery 13 company?</p> <p>14 A. Four years.</p> <p>15 Q. What did you do for them?</p> <p>16 A. I was finance director.</p> <p>17 Q. Where were you based?</p> <p>18 A. That was in Nottinghamshire.</p> <p>19 Q. Now, you graduated with your college degree in 20 '78, but you didn't pass your accountancy board 21 until '85. Is that right?</p> <p>22 A. That is right.</p> <p>23 Q. Did you take the test between '78 and '85?</p> <p>24 A. There are a number of stages you have to go 25 through.</p>

Page 45	Page 47
1 Q. Okay. How long does that normally take?	1 of Nordsman Gibb Limited. It is part of the
2 A. I don't know what you would class as normal,	2 same group as Lewmar.
3 sir.	3 Q. When did Nordsman Gibb and Lewmar become part of
4 Q. Well, did you ever take -- attempt any of the	4 the same group?
5 various stages that are necessary to receive	5 A. I believe 1995.
6 your accountancy certification and fail any of	6 Q. Were you part of the group that made the
7 those?	7 decision to -- well, tell us how that came
8 A. Yes, sir, I did.	8 about. How did the two come together?
9 Q. How many times?	9 A. Right. Nordsman Gibb had been part of a group
10 A. I think I had to retake one paper twice.	10 of companies that was purchased by some bench
11 Q. Did you have to retake any others?	11 capitalists in 1994. In 1995 they purchased the
12 A. Because of the way the exams are structured, I	12 group of companies that owned Lewmar.
13 had to retake papers that I had passed.	13 Q. And did you assume any new job responsibilities
14 Q. Okay. So you did have to retake papers in	14 in connection with Lewmar?
15 addition to the one that you had to take twice?	15 A. Not immediately. I didn't take on
16 A. Yes. You have to pass the whole section at one	16 responsibilities at Lewmar until August of last
17 time.	17 year.
18 Q. And were there any other sections that you had	18 Q. Okay. So when was that exactly? That would be
19 to take? How many sections did you have to take	19 August of 1999?
20 more than once?	20 A. Yes, sir.
21 A. There was one paper that I failed twice.	21 Q. So you had -- did you have any involvement at
22 Q. After the ladies' hosiery company, what did	22 all with Lewmar before August of 1999?
23 you -- where did you go to work?	23 A. We had limited involvement with it.
24 A. I worked in civil engineering for three, four	24 Q. All right. Describe for us the limited
25 years.	25 involvement that you had with Lewmar prior to
Page 46	Page 48
1 Q. With what? Is that a government --	1 August of 1999?
2 A. No. Now, they build roads basically.	2 A. In the sense that we were associated companies
3 Q. Was this a private company that built roads?	3 and some of the Lewmar subsidiaries were our
4 A. Yes, sir.	4 agents, I was involved with the marine products
5 Q. And what did you do for the road building	5 division, which included Lewmar and Nordsman
6 company?	6 Gibb. I attended various joint meetings, joint
7 A. I was finance manager.	7 conferences, and I reported into the managing
8 Q. And how long were you with the road building	8 director of Lewmar.
9 company?	9 Q. What exactly between the time that the two
10 A. About four years.	10 companies became affiliated sometime in 1995 and
11 Q. This would take us up to when, approximately?	11 your more formal, I guess, involvement in August
12 A. 1994.	12 of 1999, what exactly did you do for Lewmar, for
13 Q. What was your next job?	13 the Lewmar-related companies?
14 A. I joined Nordsman Gibb Limited.	14 A. We were supplied to them. We took over the
15 Q. What did you do -- is it Nordstrom?	15 manufacture of the Lewmar snap shackle range.
16 A. Nordsman, N-O-R-S-D-M-A-N.	16 Q. When did the Nordsman Gibb division or section
17 Q. Nordsman. Sorry. Nordsman Gibb Limited, what	17 of the company take over the manufacture of the
18 was your job with --	18 Lewmar snap shackle rings?
19 A. Initially, commercial manager and then	19 A. 1999.
20 commercial director.	20 Q. And the manufacture, would that include Exhibit
21 Q. What is the difference between the two jobs?	21 10?
22 A. Only inasmuch as you have additional duties as a	22 A. No. Nordsman Gibb already had its own range of
23 director. You have statutory responsibilities.	23 snap shackles, and Lewmar started to -- well,
24 Q. How long were you with Nordsman Gibb Limited?	24 they put the Gibb shackles into the Lewmar
25 A. I, in a sense, still am. I am still a director	25 catalog in 1999. In the year 2000 there were no

<p style="text-align: right;">Page 49</p> <p>1 shackles in the catalog because the customer 2 base had been transferred to Nordsman. 3 Q. So I want to make sure that we're clear. Before 4 August of 1999, you had no involvement with the 5 manufacture of Exhibit 10. Is that correct? 6 A. That is correct. 7 Q. And after August of 1999 it is no longer 8 manufactured. Is that correct? 9 A. That is correct, sir. 10 Q. So in your professional experience you have 11 never had anything to do with the manufacture of 12 Exhibit 10. Is that correct? 13 A. That is correct. 14 Q. Do you have any idea or personal knowledge -- do 15 you have any personal knowledge as to the design 16 of Exhibit 10? 17 A. No, sir. 18 Q. Do you have any knowledge as to what efforts 19 Lewmar undertook or what analysis was performed 20 in connection with the design by Lewmar of 21 Exhibit 10? 22 A. I am aware as to the style and detail to the 23 testing that they do on the products. 24 Q. How are you aware of the testing that Lewmar 25 does on the products?</p>	<p style="text-align: right;">Page 51</p> <p>1 meetings which I attend. 2 Q. Is that part of your job responsibility, to 3 review testing of Lewmar products? 4 A. I don't personally review it, but as I said in 5 the production meetings. Any problems are 6 related at that stage. 7 Q. So you might have heard about it, but you're not 8 responsible for it. Is that a fair statement? 9 A. That is, sir. 10 Q. And you don't remember hearing about any 11 problems with the shackle? 12 A. No. 13 Q. Is that correct? 14 A. That is correct, sir. 15 Q. But the fact is the company that -- you didn't 16 have any responsibility with this shackle until 17 August of 1999 at all. Is that right? 18 A. No direct responsibility, no, sir. 19 Q. And at that point in time Exhibit 10, the 20 manufacture of it, was being phased out anyway. 21 Is that right? 22 A. At that point in time it had been -- it had 23 stopped to be manufactured. 24 Q. Do you know why? 25 A. Yes, sir. The group had two snap shackles</p>
<p style="text-align: right;">Page 50</p> <p>1 A. From discussions and from testing of Nordsman 2 Gibb products that they did. 3 Q. But have you ever witnessed any testing on a 4 snap trigger latch shackle in the form of 5 Exhibit 10? 6 A. I cannot remember. I have seen shackles tested. 7 I am not sure if I have seen that particular 8 shackle tested. 9 Q. So you are not sure if you have seen this 10 particular style of shackle tested. Is that 11 correct? 12 A. That is correct, sir. 13 Q. Has anyone ever reported to you on the testing 14 of trigger latch shackles like Exhibit 10? 15 A. Sorry. How do you mean reported? 16 Q. Well, I just want -- you are the finance 17 director. Correct? 18 A. Yes. 19 Q. So would it be in the normal course of your 20 business -- the engineers would or would not 21 report to you about the testing of trigger latch 22 shackles? 23 A. I would have become aware if there had been a 24 problem with the testing of any of the Lewmar 25 products, but it would come up in production</p>	<p style="text-align: right;">Page 52</p> <p>1 manufacturers, Nordsman Gibb and Lewmar. Lewmar 2 consumed a lot of shackles. By that I mean that 3 they didn't sell many in this form. They 4 attached them to their pulley blocks. So they 5 were sold to -- do you understand the pulley 6 block? 7 Q. Somewhat, but please explain. 8 A. It's the block you would use to put a rope 9 through or sheet for tension, so using the 10 shackle to attach it to the deck, and then you 11 have got to move it around. It wouldn't be a 12 trigger latch shackle. Whereas Nordsman Gibb, 13 their range of shackles had a much higher 14 profile in the market. So they sold more 15 complete shackles. So it was a marketing 16 decision that it made more sense to use the Gibb 17 shackle because it had a better name. 18 Q. Was the decision made in -- to your knowledge, 19 do you know if anything about that decision was 20 related to the -- a determination that the 21 Gibson -- Gibb shackle, I'm sorry, was better in 22 any way, or was it simply a market decision 23 based on the name? 24 A. It was purely a marketing decision. 25 Q. What do you know -- have you done any -- excuse</p>

<p style="text-align: right;">Page 53</p> <p>1 me. Let me restart. In preparation for this 2 deposition have you done anything to determine 3 what marketing channels were utilized by Lewmar 4 in the sale of -- sale of trigger latch shackles 5 like Exhibit 10?</p> <p>6 A. I have, but I would think that you are better 7 putting that question to Matthew Townsend.</p> <p>8 Q. So what have you done then?</p> <p>9 A. We would in term of the shackle that was used, 10 the only thing we can say with certainty is that 11 we manufactured it, and it was supplied into our 12 warehouse in Havant for shipping. We cannot 13 trace precisely how it arrived in America. Most 14 likely it was shipped out to Lewmar, Inc., and 15 they sold it onwards.</p> <p>16 Q. And Lewmar, Inc., is who?</p> <p>17 A. Lewmar, Inc., is an associated company of Lewmar 18 Limited. We're both owned by the same group.</p> <p>19 Q. And where is Lewmar, Inc., based?</p> <p>20 A. Gilford, Connecticut.</p> <p>21 Q. Have you talked to anyone at Lewmar, Inc., in 22 preparation for your deposition here today?</p> <p>23 A. Yes, I have, sir.</p> <p>24 Q. Who have you talked to?</p> <p>25 A. Randy Blanton.</p>	<p style="text-align: right;">Page 55</p> <p>1 MR. HARRIS: I'm going to object on 2 attorney/client privilege. The question is 3 overly broad, may encompass discussions that 4 were had between counsel.</p> <p>5 Q. (By Mr. Thompson) In response to Mr. Harris' 6 objection, to the extent that any of your 7 conversations with Mr. Blanton occurred in the 8 presence of counsel, I don't want to inquire 9 about that, about those conversations. But I do 10 want to know -- let me ask you this. What did 11 Mr. Blanton tell you about the distribution of 12 the trigger latch shackle?</p> <p>13 A. My discussions with Mr. Blanton have been more 14 along the lines of the contractual arrangements 15 we have with our agents in America. Discussions 16 on the distribution channels, again, you should 17 refer to Mr. Townsend.</p> <p>18 Q. What contractual relations do you have with your 19 agents for distribution in America?</p> <p>20 A. It varies from agent to agent. I should say I 21 use agent and distributor not particularly in a 22 legal term in that we use both meaning the same 23 thing. With our bigger distributors we will 24 have formal contracts. With our smaller ones 25 it's almost an exchange of letters. They are</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. I'm sorry. You have to help me, Randy --</p> <p>2 A. Blanton, B-L-A-N-T-O-N.</p> <p>3 Q. What is Mr. Blanton's job?</p> <p>4 A. Mr. Blanton runs the operation in Gilford.</p> <p>5 Q. Have you talked to anyone else in the states 6 about the sale of trigger latch shackles like 7 Exhibit 10?</p> <p>8 A. No, sir.</p> <p>9 Q. So whatever information you have came from 10 Mr. Blanton; is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. I have a couple more questions about your 13 qualifications before we move on. Was I correct 14 in understanding that you have never seen this 15 trigger latch shackle in use on a boat?</p> <p>16 A. Yes, sir. That was correct.</p> <p>17 Q. So we don't have a double negative, you have 18 never seen it in use on a boat?</p> <p>19 A. No, sir.</p> <p>20 Q. So have you ever personally analyzed or observed 21 the operation of a trigger latch shackle like 22 Exhibit 10 in operation?</p> <p>23 A. No, sir.</p> <p>24 Q. What did you ask Mr. Blanton about the 25 distribution of trigger latch shackles?</p>	<p style="text-align: right;">Page 56</p> <p>1 informal.</p> <p>2 Q. Do you know if any of these formal contracts 3 contain any instructions or provisions that 4 would tell those distributors to only distribute 5 your products in connection with marine 6 application?</p> <p>7 A. We only have marine industry distributors. We 8 only deal with people in the marine industry.</p> <p>9 Q. My question was, do you know if the contracts 10 have any provisions that tell those distributors 11 to only sell a Lewmar products for use in the 12 marine industry?</p> <p>13 MR. ROBB: Let me just pose an 14 objection to the extent that it has been asked 15 and answered. The witness stated his answer was 16 he only sells to marine distributors. You may 17 answer again, sir.</p> <p>18 A. Sorry. Could you repeat the question?</p> <p>19 Q. (By Mr. Thompson) Subject to the objection, do 20 you know if there are any provisions in those 21 contracts that tell those distributors to only 22 sell Lewmar products for use in the marine 23 industry?</p> <p>24 A. I do not know.</p> <p>25 Q. Have you looked?</p>

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- 1 A. No, sir.
- 2 Q. Have you looked at the contracts at all?
- 3 A. I have not seen a copy of the contract.
- 4 Q. So you don't know whether the contracts have
5 such provision or not?
- 6 A. No, sir.
- 7 Q. Are you aware of any letter, memo or writing of
8 any kind that has been distributed to -- that
9 has been sent to distributors in the United
10 States that would tell them not to use Lewmar
11 products in non-marine applications?
- 12 A. Lewmar Limited had sent correspondence to our
13 agents in America.
- 14 Q. Okay. Do you have copies of those documents?
- 15 A. Here, sir.
- 16 Q. And we will talk about -- is this your
17 understanding, that those have been --
- 18 A. Lewmar, Inc., is our distributor in America,
19 sir.
- 20 Q. Is it your understanding that any of these
21 letters -- and you are referring to the
22 exhibits. Let's refer to these specifically.
23 Which ones are you referring to, sir?
- 24 A. I am referring to Exhibit 125 --
- 25 MR. ROBB: 124, 126?

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- 1 THE WITNESS: No. They were purely
2 the Dutch ones. There is another one somewhere,
3 the one that came out late.
- 4 Q. (By Mr. Thompson) Is this the supplemental, the
5 one that was supplementally produced today?
- 6 A. Yes.
- 7 MR. ROBB: 246?
- 8 THE WITNESS: Yes.
- 9 Q. (By Mr. Thompson) Just so we're clear, I'm
10 understanding, and correct me if I'm wrong, that
11 the only letter that was sent to Lewmar
12 distributors or agents in the states is
13 exhibit -- telling them not to sell the Lewmar
14 products for non-marine applications is Exhibit
15 246, and that occurred after the Owen Hart
16 accident. Is that correct?
- 17 A. That is correct, sir.
- 18 Q. Okay. So even though we had Exhibits 124, 125
19 and 126 telling the Dutch companies not to
20 distribute the products for non-marine
21 application, and early as when, sir?
- 22 A. Well, I don't -- 125 isn't dated.
- 23 Q. Okay.
- 24 A. So I don't know when that was issued. The other
25 two have both been issued by the Dutch branch.

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- 1 Q. So and let's look at this one. This would be
2 124. It's dated when, sir?
- 3 A. 11/9/96.
- 4 Q. And Exhibit 126 is dated --
- 5 A. 1/7/99.
- 6 Q. And so Lewmar distributors in Holland were told
7 as early as 1996 and again in 1999 not to
8 distribute Lewmar products for non-marine
9 applications. Is that correct?
- 10 A. That is correct, sir.
- 11 Q. Because you were -- your company was aware as
12 early as 1996 that, in fact, the product was
13 being used in the non-marine application. Is
14 that right?
- 15 A. We were aware of one incident when the
16 product -- when a snap shackle product was used
17 for non-marine application.
- 18 Q. You were aware of that incident in 1996, and you
19 are referencing Exhibit 124. Is that correct?
- 20 A. Yes, sir.
- 21 Q. And then in 1999 -- now I am looking at Exhibit
22 126. You received a message of another accident
23 in the U.S.A. Is that right?
- 24 MR. HARRIS: I object to the form of
25 the question. Ambiguous in regard to another

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- 1 accident in the United States. The first
2 incident was an incident in Hamburg, Germany, I
3 believe the testimony was.
- 4 Q. (By Mr. Thompson) That's a fair objection. Let
5 me rephrase. In Exhibit 125 you were advised of
6 an accident in the United States. Is that
7 correct, sir?
- 8 A. No, sir.
- 9 Q. Would you read the first line of Exhibit 126
10 starting with unfortunately?
- 11 A. Unfortunately we currently received the message
12 that in the U.S.A. a serious accident happened
13 with a harnessing -- harness rig of which a
14 Lewmar trigger shackle was part.
- 15 Q. What is the date of that memo?
- 16 A. The first of July.
- 17 Q. That's July 1999?
- 18 A. Yes.
- 19 Q. Was this the Owen Hart accident?
- 20 A. Yes.
- 21 Q. So in 1996 you became aware of the bungee
22 jumping accident? Lewmar became aware of the
23 bungee jumping accident?
- 24 A. Yes, sir.
- 25 Q. And you provided a notice to users in Holland

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1	that sales should not be made for non-marine	1 Again, outside the presence of -- any that
2	applications. Is that correct?	2 occurred outside the presence of counsel. When
3 A.	Yes, sir.	3 did you first speak to Helen Watts about the
4 Q.	And no such notice was provided to purchasers of	4 issue of the notice that was provided to Holland
5	the products in the United States until Exhibit	5 agents and distributors?
6	246 was mailed out in June of 1999. Is that	6 A. I couldn't give you a date, sir.
7	correct?	7 Q. Approximately, sir.
8 A.	Right.	8 A. Post-August.
9	MR. HARRIS: I object to the form of	9 Q. What was the reason or what prompted you to go
10	the question. Misstates the previous testimony.	10 speak to Helen Watts about this issue? When I
11	We are not talking about notice to his ultimate	11 say this issue, specifically I'm talking about
12	users. We are talking about notices to either	12 Exhibit 124.
13	distributors or agents.	13 A. Because I knew that Mrs. Watts was leaving our
14 Q.	(By Mr. Thompson) Okay. You can answer.	14 organization in December, and I knew that this
15 A.	Could you repeat the question?	15 would be on my desk, so it clearly made sense to
16 Q.	No notice was provided to distributors or agents	16 review the papers with her.
17	in the United States until 16 June 1999?	17 Q. Okay. How did you actually find these papers?
18 A.	That is correct, sir.	18 I mean, did something prompt you to go look and
19 Q.	Now, do you know why Lewmar decided not to	19 see if notice had been provided to the agents
20	distribute the same notice that the users or the	20 and distributors?
21	agents and distributors in Holland got in 1996	21 A. It was part of the documents that we have given
22	to other distributors and agents throughout the	22 to our attorneys.
23	world?	23 Q. Did you and Ms. Watts talk specifically about
24 A.	I believe it was because it was such unusual use	24 Exhibit 124?
25	of the product. We couldn't actually imagine	25 A. We reviewed the whole file, sir.
Page 62		Page 64
1	anybody else attempting to use it for such a	1 Q. When you say review the whole file, what was in
2	use.	2 that file?
3 Q.	How do you know that? I mean, did you talk to	3 A. It's the documents that we forwarded to our
4	anyone that was involved with the distribution	4 attorneys.
5	of the notice in 1996?	5 Q. Have you produced all of those documents? Do
6 A.	Yes, sir.	6 you know what's been produced to other counsel
7 Q.	Who have you talked to?	7 in this case?
8 A.	I have spoken to our previous finance director.	8 MR. HARRIS: I am going to object to
9 Q.	Okay. Who is that?	9 the form of the question. It is vague and
10 A.	Mrs. Helen Watts.	10 ambiguous. The document production speaks for
11 Q.	And who is -- is Helen Watts still with the	11 itself. What other documents that may exist to
12	company?	12 the extent they involve attorney/client
13 A.	No, sir.	13 privilege or work product, we have so stated in
14 Q.	Where is she now?	14 our discovery responses.
15 A.	I think she's in the British Museum, sir.	15 Q. (By Mr. Thompson) How big was the file that you
16 Q.	Is she here in the city today? You say in the	16 pulled together in terms of size?
17	British Museum. She works for the British	17 A. Oh, it's a couple of box files.
18	Museum?	18 Q. And you and Mrs. Watts reviewed that file
19 A.	I believe so.	19 together?
20 Q.	In what city?	20 A. Yes, sir.
21 A.	London.	21 Q. And was this at Lewmar's offices?
22 Q.	When did you speak to Helen Watts?	22 A. Yes, sir.
23 A.	Until December, sir, she worked at Lewmar, so we	23 Q. In Havant?
24	have had a number of discussions on this issue.	24 A. Yes, sir.
25 Q.	Okay. I want to go through those discussions.	25 Q. And how much time did you spend reviewing those

<p style="text-align: right;">Page 65</p> <p>1 files with Mrs. Watts?</p> <p>2 A. We discussed the case on a number of occasions.</p> <p>3 Q. And what -- when you say you discussed the 4 case --</p> <p>5 A. She briefed me as to what was happening. She 6 briefed me with the --</p> <p>7 MR. ROBB: Excuse me. Let me just 8 interpose an objection to the extent that she 9 may have received information from counsel. I 10 am going to object to it as calling for perhaps 11 attorney/client or work product that it should 12 not be communicated at this time.</p> <p>13 Q. (By Mr. Thompson) You can answer.</p> <p>14 MR. HARRIS: You can answer.</p> <p>15 MR. WICKENS: He means except to the 16 extent that it involves attorney/client.</p> <p>17 MR. HARRIS: As we discussed, any 18 discussions he had with counsel in this case are 19 privileged. But to the extent that didn't 20 involve those discussions you may --</p> <p>21 THE WITNESS: If we are talking about 22 discussions regarding discussions somebody else 23 has had with you, is that privileged?</p> <p>24 MR. HARRIS: That would be 25 privileged.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. And when you say this notice, you are talking 2 about Exhibit 125?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And did Ms. Watts tell you who wrote Exhibit 5 125?</p> <p>6 A. I believe that she wrote it, sir.</p> <p>7 Q. Did she tell you who told her to write that?</p> <p>8 A. No, sir.</p> <p>9 Q. Did she tell you to whom she distributed Exhibit 10 125?</p> <p>11 A. I believe it was only sent to our Dutch 12 subsidiary.</p> <p>13 Q. Did she tell you who made the decision to only 14 send it to the Dutch subsidiary?</p> <p>15 A. No, sir.</p> <p>16 Q. To your knowledge was that her decision?</p> <p>17 A. I do not know, sir.</p> <p>18 Q. Have you asked her?</p> <p>19 A. No, sir.</p> <p>20 Q. Have you asked her why it wasn't sent to other 21 users or seller of the product?</p> <p>22 A. As I said earlier, I believe the reason was that 23 it's such an unusual use of a product.</p> <p>24 Q. But she didn't tell you that; that's just your 25 speculation as you sit here today?</p>
<p style="text-align: right;">Page 66</p> <p>1 THE WITNESS: Then I think it's 2 privileged.</p> <p>3 Q. (By Mr. Thompson) Well, are you suggesting, 4 sir, that the only thing you spoke about with 5 Mrs. Watts -- were any attorneys present during 6 these conversations?</p> <p>7 A. No, sir.</p> <p>8 Q. And did Ms. Watts, to your knowledge, did she 9 participate in pulling together the file?</p> <p>10 A. She assisted pulling together the file.</p> <p>11 Q. Okay. Who all assisted?</p> <p>12 (Off the record).</p> <p>13 Q. (By Mr. Thompson) Who were the people that 14 assisted?</p> <p>15 A. It was Mrs. Watts, Mr. Mark Gibson and 16 Mr. Matthew Townsend.</p> <p>17 Q. Anyone else?</p> <p>18 A. I am not aware.</p> <p>19 Q. Did you ask Ms. Watts about if she was involved 20 in providing the notice that we have talked 21 about in Exhibit 124?</p> <p>22 A. No. 124 is from our Dutch distributor.</p> <p>23 Q. Okay.</p> <p>24 A. I believe this notice is from Mrs. Watts, which 25 was certainly to him.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. That is my understanding as to the reason, sir.</p> <p>2 Q. Okay. And I want to understand what the basis 3 of your understanding is, that that's the 4 reason. Has anyone told you that?</p> <p>5 A. Not -- we have had discussions with Mr. Townsend 6 and Mr. Gibson. They were with the company at 7 the time. It may be better to ask them further 8 details.</p> <p>9 Q. Okay. Exclusive or in addition to Ms. Watts, 10 has anyone at Lewmar told you why the decision 11 was made to only send Exhibit 125 to Holland?</p> <p>12 A. No, sir.</p> <p>13 Q. So nobody has told you how that decision was 14 made?</p> <p>15 A. No, sir.</p> <p>16 Q. So your opinion that it was because this was an 17 isolated incident is just your thoughts as you 18 sit here today?</p> <p>19 A. As I just said, we have had discussions with 20 Mr. Gibson and Mr. Townsend as well. They were 21 with the company at the time the notice was sent 22 out.</p> <p>23 Q. But Mr. Gibson and Mr. Townsend have not told 24 you why that decision was made?</p> <p>25 A. Again, the comment is that my understanding from</p>

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1 discussions with them and Ms. Watts is that that 2 is the case. 3 Q. And my question then is, if your understanding 4 is based on conversations with them, I want to 5 know what they told you. 6 A. They have stated that the basis for their 7 statement -- I'm suggesting you should ask them. 8 Q. Sorry to belabor this, but we must not be 9 communicating on this point. Has Mr. Gibson, 10 Mr. Townsend or Ms. Watts told you why the 11 notice, Exhibit 125, was only distributed to 12 Holland? 13 MR. HARRIS: At this point I am going 14 to object and asked and answered. Go ahead and 15 answer. 16 A. I think this calls for me to give -- 17 MR. HARRIS: Any discussions you have 18 had with counsel you are not to talk about. 19 Just if you have your recollection of any 20 discussions with Ms. Watts, Mr. Gibson or 21 Mr. Townsend outside of any conversations that 22 involved counsel, then you can disclose that. 23 Otherwise, it's not. 24 A. The conversations we had was in the presence of 25 counsel.	1 MR. HARRIS: And I think you also 2 have a very specific request in regard to any 3 memoranda, bulletins, communications to 4 distributors in which we have designated, I 5 believe, Mr. Townsend to respond to that. 6 MR. THOMPSON: All right. That's 7 fine. 8 MR. HARRIS: Thank you. 9 Q. (By Mr. Thompson) Have you made a search to see 10 if any notice other than the one referenced 11 in -- exhibited by Exhibit 125 and Exhibit 246 12 has been provided to distributors or agents of 13 Lewmar advising them not to sell Lewmar products 14 for non-marine use? 15 A. I am not aware that any other formal notice has 16 been given. 17 Q. Are you aware of any informal notice? 18 A. I have been in meetings, in conferences, when 19 the statement has been made that we should not 20 be supplying to non-marine industry without 21 prior authorization. 22 Q. When were those discussions or comments made? 23 A. I believe it was in 1998. 24 Q. Do you recall who made that comment? 25 A. We had a discussion at the sales meeting
Page 70	Page 72
1 MR. THOMPSON: Well, even if the 2 conversation was in the presence of counsel it 3 does not make the fact as to why the decision 4 was made in 1996 privileged. And if he knows or 5 if he has been told by other company 6 representatives why the decision was made only 7 to provide notice to users in Holland, then I am 8 entitled to know that. 9 MR. HARRIS: Well, just so the record 10 is clear, he's just told you that he wasn't 11 involved originally in the decision in regard to 12 Exhibit 125; that the only way he would have 13 information, and it's clear now, is through 14 discussions that involve counsel from others. 15 So I think that tells you your answer right 16 there. Any knowledge he has on this topic would 17 come from discussions involving counsel. 18 Therefore it would be privileged. He has 19 already told you who you can ask to get the 20 information you desire. 21 MR. THOMPSON: The problem is though 22 he has been designated as the person that would 23 know about the distribution, sale of this 24 product, and so if he knows, I am entitled to 25 know.	1 regarding non-marine uses of our products. 2 Q. Who was present at that meeting? 3 A. I have got to state first that I was present at 4 that meeting as a director of Nordsman Gibb 5 Limited, not Lewmar. Our managing director was 6 present. Helen Watts was present. Our 7 subsidiary managers were present. There may 8 have been some of our product managers. 9 Q. Who was the managing director? 10 A. Simon Hartley. 11 Q. Is it sir, a Mr.? 12 A. Mr. 13 Q. Mr. Hartley, is Mr. Hartley still with the 14 company? 15 A. Yes, he is, sir. 16 Q. And what is his position? 17 A. He is still managing director. 18 Q. Is that like -- does that mean he is the -- 19 A. He is the boss. 20 Q. He is the boss? 21 A. Yeah. 22 Q. CEO? 23 A. Yes. 24 Q. And subsidiary managers, how many of those were 25 present?

<p style="text-align: right;">Page 73</p> <p>1 A. We have four subsidiaries, five subsidiaries, 2 sir. 3 Q. So is it fair to say that the bosses of all the 4 subsidiaries are present? 5 A. Yes, sir. 6 Q. Who were they? 7 A. Ova Necander. 8 Q. And what subsidiary is he – 9 A. Sweden. Subsidiary manager in Holland in the 10 UK, France and America. 11 Q. I need names. 12 A. You want names. All right. Hendrik van der 13 Linde is the Dutch manager, Michelle Villeneau 14 is the French manager, Martin Cowell is the UK 15 manager, and Randy Blanton is the U.S.A. 16 manager. 17 Q. So we have got Sweden, Holland, UK, France and 18 the U.S. 19 A. Yes, sir. 20 Q. So there were five subsidiary managers? 21 A. Yes, sir. Which ones have we got? 22 Q. Sweden. We don't have Holland? 23 A. Hendrik van der Linde. 24 Q. And that is Mr. van der Linde that is the author 25 of Exhibit 124. Is that correct?</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Have you looked to see if there are any minutes 2 from this meeting that would relate in any way 3 to the non-marine sale or use of Lewmar 4 products? 5 A. No, sir, but I am very certain that minutes were 6 not done at that stage. 7 Q. How about have you made any inquiry of 8 participants or attendees at the meeting to 9 determine whether or not they kept any notes of 10 their own that would reflect a discussion of 11 non-marine use of Lewmar products? 12 A. No, sir, I have not. 13 Q. All right. So now if I understand the CEO, 14 Mr. Hartley, was present? 15 A. Yes, sir. 16 Q. As were the CEO's or the heads of all the 17 subsidiaries? 18 A. Yes, sir. 19 Q. And you recall that there was a discussion about 20 the non-marine use of Lewmar products. Is that 21 right? 22 A. Yes, sir. 23 Q. All right. Tell us everything you can recall in 24 as much detail as you can recall about that 25 discussion.</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yes, sir. 2 Q. Now, product managers, you mentioned product 3 managers. Were they also present? 4 A. I cannot say with certainty if they were present 5 at that stage or not. 6 Q. Was there a stage at which they were present 7 during the discussion of non-marine use of the 8 product? 9 A. The conference normally lasted a couple of days, 10 and they are present at part of those 11 discussions. 12 Q. Where did the conference occur? 13 A. In our offices in Havant. 14 Q. Do you know what month of 1998 this occurred? 15 A. I believe it was May or June. 16 Q. Are the proceedings in this meeting recorded in 17 any way? 18 A. Not really, no. 19 Q. Well, is there anyone that's the secretary of 20 this meeting? 21 A. I don't believe there were minutes taken. 22 Q. Have you made a search to see if there were any 23 minutes taken during this meeting? 24 A. I have not received this. We have the pack of 25 people's presentations given out.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I cannot recall how the subject came up. I 2 should say that the company I was with do supply 3 into the industry market, but it's a different 4 product than the Lewmar product. It's a rigging 5 product. And I had done a presentation on 6 industry uses of Nordsman Gibb products that 7 day. I believe that there was just a brief 8 general discussion as to whether or what actions 9 we should take regarding non-marine use of our 10 product. 11 Q. Okay. When you say the company that you were 12 with, are you talking about Nordsman Gibb? 13 A. Yes, sir. 14 Q. Nordsman Gibb is -- also made trigger latch 15 shackles. Is that right? 16 A. It is right, yes, sir. 17 Q. Did the Nordsman Gibb trigger latch shackles 18 have industrial or non-marine applications? 19 A. Nordsman Gibb produced a separate industrial 20 catalog. I don't believe any of the snap 21 shackles were included in it, and during the 22 period that I was there I am not aware of any 23 non-marine use for snap shackles. They would be 24 a very expensive option if someone was to use 25 them.</p>

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1 Q. Was there any kind of -- we will get down to the specifics, but was there any kind of snap shackle that you know was put to some kind of -- an industrial application?

5 A. I am aware of actually one non-marine use for a snap shackle.

7 Q. Okay. And what is that?

8 A. I will use this one to show you, but it was not a trigger latch shackle. Okay?

10 Q. I understand.

11 A. It had -- it was significantly bigger than this, had a bigger eye on it coming out. And it was sold to the Ministry of Defense. It was either used on tanks or on their support lorries. You can imagine the tanks going along. If there is a dip in the field, they can't go in and out. And they had like drain pipes attached to them, and they pull a lever, which would have a snap shackle which would release the snap shackle. The drain pipes fall into the hole and the tank goes on top of it.

22 Q. So they were used to help secure drain pipes on the front that would fill up the ditch, I guess, so that the tank could go across?

25 A. Yes.

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1 A. No, sir.

2 Q. At this meeting?

3 A. No. Let me explain, sir. My presentation was on non-marine use of Nordsman Gibb products.

5 Q. I understand.

6 A. Not Lewmar products.

7 Q. Okay. And was the purpose of your presentation to -- what was the purpose of your presentation?

9 A. Because we were part of the same group, in many indications the Lewmar subsidiaries, certainly in Europe, were our agents, and it was an understanding to make them know the availability for Nordsman Gibb products in the non-marine sector.

15 Q. Was there any discussion that these broader markets also be available of Lewmar products?

17 A. No, sir.

18 Q. Was it discussed at all?

19 A. Not to my knowledge, sir.

20 Q. Do you recall any comments or statements by anyone at that meeting about non-marine application for Lewmar products?

23 A. Beyond the discussion which I have already mentioned, no, sir.

25 Q. What discussion did occur about non-marine

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1 Q. And was this a Nordsman Gibb shackle?

2 A. Nordsman Gibb plunger shackle.

3 Q. How does a plunger shackle differ from a trigger latch shackle?

5 A. I just happen to have one here. You can always use them as key rings. They are not designed to open. The release is here which releases that way. There is no area for putting your finger in or a fit. They have a different use on a yacht. They are a much cheaper product and would be used for hoisting a sail or that kind of thing, a totally different purpose to that.

13 Q. Am I correct in understanding that one of the primary differences between the plunger trigger and the trigger latch shackle is that the trigger latch shackle can be released under load?

18 A. That question should probably be targeted at Mr. Gibson or Mr. Townsend.

20 Q. Okay. Now, back to this, did you make a presentation about non-marine marketing or markets that were available for Lewmar products?

23 A. No.

24 Q. All right. Were you the one that brought up non-marine use of Lewmar products?

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1 application for Lewmar products?

2 A. Only to the extent that we would not be supplying it without authority.

4 Q. Was there some discussion -- was it made -- comment made by someone that indicated that non-marine use had occurred of Lewmar products?

7 A. The people at the meeting were aware of the bungee jump case. I believe that the person that -- no, there was no discussion as to what uses may have been made of Lewmar products on monitoring purposes.

12 Q. Was the bungee jump case specifically mentioned in this meeting?

14 A. I cannot recall.

15 Q. But you do recall specifically that there was some mention at this meeting that the company should not allow non-marine applications without authorization. Is that correct?

19 A. Yes, sir.

20 Q. Did the CEO of the company or anyone else make any suggestions about making that rule known to the agents or distributors throughout the world?

23 A. Well, our main agents were sat around the table.

24 Q. All right. Who are your main agents?

25 A. Well, our distributors in Holland, France, are

<p style="text-align: right;">Page 81</p> <p>1 all distributors.</p> <p>2 Q. Did you understand that as a result of this 3 meeting that your main agents around the world, 4 these five individuals, were to make it known in 5 their area markets that the product was not to 6 be used for non-marine application without 7 specific authorization?</p> <p>8 A. I cannot recall, sir.</p> <p>9 Q. Well, you do recall that it was discussed?</p> <p>10 A. Yes.</p> <p>11 Q. The non-marine application should not be allowed 12 without specific authorization?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you know, sir, as you sit here today whether 15 any of these individuals took any steps 16 following this meeting to see that that rule 17 that non-marine application would not be allowed 18 without specific authorization, that that was 19 followed?</p> <p>20 A. I do not know, sir.</p> <p>21 Q. Have you even bothered to ask any of those 22 people?</p> <p>23 A. No, sir.</p> <p>24 Q. So if I want to know what was done in America to 25 see that these snap shackles were not used for</p>	<p style="text-align: right;">Page 83</p> <p>1 A. I spoke for 15, 20 minutes.</p> <p>2 Q. Where are those slides and that file kept?</p> <p>3 A. It will either be in my old office in 4 Nottinghamshire or in Havant.</p> <p>5 Q. Does it have a file name? Is it like a proper 6 that you have written the name of the file on?</p> <p>7 A. No. I would have given the original of this 8 back to our Sales Department.</p> <p>9 Q. Have you looked at this file recently?</p> <p>10 A. No, sir.</p> <p>11 Q. But you are certain that it still exists 12 somewhere?</p> <p>13 A. I'm certain that the photographs still exist, 14 yes.</p> <p>15 Q. Whether or not any notes or -- you just don't 16 know?</p> <p>17 A. I put slides up to describe the kind of use that 18 you could have made with Nordsman Gibb products.</p> <p>19 Q. And did those Nordsman Gibb products include 20 snap shackles?</p> <p>21 A. No, sir.</p> <p>22 Q. Are you aware of any -- strike that. 23 MR. HARRIS: Now that we have 24 established that the presentation had to do with 25 Nordsman Gibb product and not snap shackles, and</p>
<p style="text-align: right;">Page 82</p> <p>1 non-marine applications, I go talk to somebody 2 else?</p> <p>3 A. If you are discussing America, then Mr. Blanton 4 is the person to talk to, sir.</p> <p>5 Q. Okay. And as for these other marketplaces, I 6 need to talk to the heads of those subsidiaries. 7 Is that right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you keep any written materials or did you 10 hand out any written materials advising the 11 attendees of this meeting of potential 12 non-marine markets for the Nordsman Gibb 13 products?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have copies of those documents in your 16 files somewhere?</p> <p>17 A. They are available, yes.</p> <p>18 Q. Was this a formal handout that you gave to the 19 attendees at the meeting?</p> <p>20 A. No. I did a presentation with slides.</p> <p>21 Q. Do you still have those slides?</p> <p>22 A. I certainly have copies of the photographs we 23 used, yes.</p> <p>24 Q. Did you give a speech? I mean, did you keep 25 notes?</p>	<p style="text-align: right;">Page 84</p> <p>1 certainly not trigger latch shackles, I am going 2 to object to any further questioning in this 3 line because it has nothing to do with anything 4 in this case and specifically any area in the 5 notice.</p> <p>6 Q. (By Mr. Thompson) Are you, sir, aware of how 7 Lewmar sales information is retained in the 8 company?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. Now, for instance what is the American 11 agent or distributor?</p> <p>12 A. Lewmar, Inc.</p> <p>13 Q. Is Lewmar, Inc., sales information availability 14 to -- is it Lewmar Limited? Is that the name of 15 the English corporation?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Is Lewmar, Inc., the U.S. agent sales 18 information available to you at Lewmar Limited?</p> <p>19 A. They will supply it to us if requested.</p> <p>20 Q. Have you asked Lewmar, Inc., if they have any 21 information about sales of trigger latch 22 shackles in the American market?</p> <p>23 MR. HARRIS: I object to the form of 24 the question. Overly broad in regard to sales 25 of trigger latch shackles. You can answer.</p>

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1 A. I haven't directly asked them that, sir.	1 your customers are using trigger latch shackles
2 Q. (By Mr. Thompson) Does anyone that reports to 3 you, do you know if anyone that reports to you 4 has asked for a report from Lewmar, Inc., about 5 the sales of trigger latch shackles in the 6 United States?	2 for non-marine applications?
7 A. The person that would have asked that question 8 is Matthew Townsend, who is product manager.	3 A. We have issued the notice to our subsidiaries
9 Q. Has Mr. Townsend reported to you that he did or 10 did not make that inquiry?	4 regarding it, and on a more general basis we are
11 A. No, sir.	5 taking advice as to what we should do in the
12 Q. Have you asked -- have you undertaken in any way 13 to determine whether or not trigger latch 14 shackles have been used for non-marine 15 applications in the United States?	6 future to stop any or to attempt to stop any
16 A. The action I have taken has been to check 17 through our records in terms of any legal claim, 18 insurance claims. Beyond that, no, sir.	7 non-marine use of our product.
19 Q. Okay. so you've only checked to see if you 20 were sued or if somebody made a claim because of 21 a non-marine application. Is that right?	8 Q. Okay. But my question is, have you done
22 A. That's correct, sir.	9 anything to try and determine whether or not
23 Q. Have you undertaken to find out if non-marine 24 sales have occurred?	10 non-marine use was occurring by anyone other
25 MR. HARRIS: I object to the form of	11 than Action Specialists?
1 the question in regard to what a non-marine sale 2 is. Ask him about what a customer does when he 3 walks in off the street at a boat supply shop 4 and buys a shackle?	12 A. I personally have not, sir.
5 MR. THOMPSON: Sure.	13 Q. Do you know if anyone in the company has done
6 Q. (By Mr. Thompson) Let me be more specific in 7 response to Mr. Harris' question. Have you 8 undertaken any efforts to determine whether or 9 not trigger latch shackles have been utilized 10 for non-marine applications in the United 11 States?	14 A. I am not aware, sir.
12 A. The only time I have become aware of it is post 13 this incident.	15 MR. THOMPSON: Now, Mark, if I am
14 Q. Okay. After this accident, have you determined 15 that there were non-marine applications 16 occurring for trigger latch shackles in the 17 United States?	16 understanding this right, Mr. Swales has been
18 A. I understand that one of our -- one customer did 19 purchase them for non-marine use.	17 designated to testify in response to paragraph
20 Q. Okay. And what customer was that?	18 two of our cross-notice, which says that among
21 A. Action Specialists.	19 other things that he would be the person most
22 Q. Have you checked to see if any other customers, 23 wherever they are located, not just the U.S., 24 but throughout the world where this product is 25 distributed, have you checked to see if any of	20 knowledgeable about all known uses of products,
	21 distribution of products, oversight of product
	22 sales. Is that correct?
	23 MR. HARRIS: I believe No. 2
	24 specifically refers to the method, manner or
Page 86	Page 88
1 the question in regard to what a non-marine sale 2 is. Ask him about what a customer does when he 3 walks in off the street at a boat supply shop 4 and buys a shackle?	1 policy retaining various documents.
5 MR. THOMPSON: Sure.	2 MR. THOMPSON: Correct.
6 Q. (By Mr. Thompson) Let me be more specific in 7 response to Mr. Harris' question. Have you 8 undertaken any efforts to determine whether or 9 not trigger latch shackles have been utilized 10 for non-marine applications in the United 11 States?	3 MR. HARRIS: Then you described what
12 A. The only time I have become aware of it is post 13 this incident.	4 those documents are. If you are asking him
14 Q. Okay. After this accident, have you determined 15 that there were non-marine applications 16 occurring for trigger latch shackles in the 17 United States?	5 about sales in the United States, which would be
18 A. I understand that one of our -- one customer did 19 purchase them for non-marine use.	6 relevant, or in the world, which I don't think
20 Q. Okay. And what customer was that?	7 would, but to the extent it could ever be
21 A. Action Specialists.	8 construed to be relevant, Mr. Townsend could
22 Q. Have you checked to see if any other customers, 23 wherever they are located, not just the U.S., 24 but throughout the world where this product is 25 distributed, have you checked to see if any of	9 respond to that.
	10 MR. THOMPSON: Okay.
	11 Q. (By Mr. Thompson) I understand, sir, that you
	12 are aware that one client, Action Specialists,
	13 was buying these trigger latch shackles for
	14 non-marine application. Is that correct, sir?
	15 A. Yes, sir.
	16 Q. How did you become aware of that?
	17 A. It came in discussions with counsel.
	18 Q. Outside the presence of counsel, have you spoken
	19 to anyone at Action Specialists?
	20 A. I have not.
	21 Q. Have you spoken to anyone in the Lewmar
	22 companies that dealt directly with Action
	23 Specialists?
	24 A. I have not, sir.
	25 Q. Do you know to what uses Action Specialists was

<p style="text-align: right;">Page 89</p> <p>1 putting the Lewmar trigger latch shackle?</p> <p>2 MR. HARRIS: If you have any</p> <p>3 independent knowledge other than through</p> <p>4 counsel, you can answer.</p> <p>5 MR. THOMPSON: Again, I don't think</p> <p>6 the fact that you tell him what the facts are</p> <p>7 makes it privileged.</p> <p>8 MR. WICKENS: I think you're wrong.</p> <p>9 Q. (By Mr. Thompson) Do you know what Action</p> <p>10 Specialists was doing with Lewmar trigger latch</p> <p>11 shackle?</p> <p>12 A. I understand that they requested trigger latch</p> <p>13 shackles for the dragging of props on a set.</p> <p>14 Q. Do you know how many?</p> <p>15 MR. HARRIS: How many what?</p> <p>16 Q. (By Mr. Thompson) How many trigger latch</p> <p>17 shackles Action Specialists purchased for</p> <p>18 non-marine application?</p> <p>19 A. I believe they purchased 24.</p> <p>20 Q. Do you know over what period of time those</p> <p>21 purchases occurred?</p> <p>22 A. Not precisely, sir.</p> <p>23 (Off the record).</p> <p>24 Q. (By Mr. Thompson) Do you have any understanding</p> <p>25 as to the approximate period of time that the --</p>	<p style="text-align: right;">Page 91</p> <p>1 A. No, sir.</p> <p>2 Q. Is that same individual still responsible for</p> <p>3 the Action Specialists account?</p> <p>4 A. We no longer supply to Action Specialists, sir.</p> <p>5 Q. Who made that decision?</p> <p>6 A. Mr. Blanton.</p> <p>7 Q. Have you been told why Mr. Blanton decided to no</p> <p>8 longer supply shackles to Action Specialists?</p> <p>9 A. Because we discovered what they were using them</p> <p>10 for.</p> <p>11 Q. Am I correct in understanding from that answer</p> <p>12 that you considered the use that Action</p> <p>13 Specialists was putting the trigger latch</p> <p>14 shackles to improper?</p> <p>15 A. In terms of the -- or in our case absolutely</p> <p>16 yes, sir.</p> <p>17 Q. To your understanding what made that use</p> <p>18 improper?</p> <p>19 A. Again, I'm not technical. The trigger latch</p> <p>20 shackle that was used is designed for release</p> <p>21 under load. It is not designed to hoist people</p> <p>22 up or down. It's purely designed as a marine</p> <p>23 product for use with a spinnaker.</p> <p>24 Q. It's not designed to release under load</p> <p>25 accidentally, is it?</p>
<p style="text-align: right;">Page 90</p> <p>1 over the period of time approximately -- I know</p> <p>2 you have said not specifically -- that these 24</p> <p>3 trigger latch shackles were purchased by Action</p> <p>4 Specialists.</p> <p>5 A. I believe it was during the period '98, '99.</p> <p>6 I'm not certain.</p> <p>7 Q. Do you know where the documents are retained</p> <p>8 that would reflect those sales?</p> <p>9 A. They are retained in Gilford.</p> <p>10 Q. That's Gilford, Connecticut?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you know who the individual responsible for</p> <p>13 the Action Specialists account at Lewmar Limited</p> <p>14 is?</p> <p>15 A. It came through our California office.</p> <p>16 Q. Do you know who the person is in California that</p> <p>17 dealt with Action Specialists?</p> <p>18 A. I cannot recall his name at the moment.</p> <p>19 Q. It is a gentleman?</p> <p>20 A. Yes.</p> <p>21 Q. And was that individual account person or the</p> <p>22 account relationship throughout 1998 and 1999?</p> <p>23 A. I believe so.</p> <p>24 Q. Now, the California office, do you know where</p> <p>25 it's located?</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. HARRIS: I object to the form of</p> <p>2 the question as vague and ambiguous, lacks</p> <p>3 foundation.</p> <p>4 Q. (By Mr. Thompson) Am I correct in understanding</p> <p>5 that the product is designed so that any release</p> <p>6 must be an affirmative decision by someone to</p> <p>7 release it? It doesn't just, when the load</p> <p>8 occurs, it doesn't automatically release. Is</p> <p>9 that right?</p> <p>10 A. That is correct, sir.</p> <p>11 Q. It is designed so that an individual, someone</p> <p>12 can decide to release it even though it's under</p> <p>13 load. Is that correct?</p> <p>14 A. That is correct, sir.</p> <p>15 Q. All right. And so what about the use to which</p> <p>16 Action Specialists was putting the trigger latch</p> <p>17 shackle made it inappropriate for -- an</p> <p>18 inappropriate application?</p> <p>19 A. The product is not designed to lift people. It</p> <p>20 is designed for use on a sailboat with a</p> <p>21 spinnaker.</p> <p>22 Q. Did you have an understanding that Action</p> <p>23 Specialists was using the trigger latch shackle</p> <p>24 to hoist or lower people?</p> <p>25 A. Not until after the incident, no, sir.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. And when you say the instance, are you talking 2 about Mr. Hart's accident? 3 A. Yes, sir. 4 Q. How did you find out about this? 5 A. Personally I found out when this memorandum came 6 around. 7 Q. And you are talking about Exhibit 246? 8 A. Yes. 9 Q. So you learned in June of 1999 that Action 10 Specialists had been utilizing a Lewmar trigger 11 last shackle to hoist or lower people? 12 A. No, sir. I didn't know at that time that Action 13 Specialists were the company doing it. 14 Q. You knew that someone had been doing it? 15 A. Yes, sir. 16 Q. Have you asked anyone at the company if trigger 17 latch shackles should or should not be used to 18 hoist people or lower people? 19 A. Yes, sir. 20 Q. Who have you asked? 21 A. We have had discussions with Mr. Townsend and 22 Mr. Gibson. I have also had discussions with 23 people from Nordsman Gibb who are regular 24 sailors. 25 Q. Who are those individuals that you talked to?</p>	<p style="text-align: right;">Page 95</p> <p>1 A. I am not aware of any. 2 Q. Has anyone ever told you that they were aware of 3 trigger latch shackle being used in that way? 4 A. Not a trigger latch shackle, no. 5 Q. What kind of shackle is sometimes -- is there a 6 shackle that is sometimes used to hoist sailors 7 up a mast? 8 MR. ROBB: Let me object. If it is 9 not a trigger latch, it has nothing to do with 10 this case, and it is certainly outside both the 11 scope of both of the WWF and the plaintiff's 12 notice. 13 MR. HARRIS: I would join in that 14 objection. 15 Q. (By Mr. Thompson) Do you know of any snap 16 shackle that's used? 17 A. I understand that on rare occasions people may 18 use a plunger shackle. It is certainly not 19 recommended. 20 Q. What is the basis of that understanding? 21 MR. ROBB: Could I just have a 22 continuing objection on the fact that this is 23 outside of the trigger latch? I don't want to 24 interrupt you. If you would just give me a 25 continuing objection, we can just flow through,</p>
<p style="text-align: right;">Page 94</p> <p>1 A. Mr. Peter Weeden, W-E-E-D-E-N. 2 Q. Anyone else at Nordsman Gibb? 3 A. No, sir. 4 Q. Have you ever been told that trigger latch 5 shackles are sometimes used to hoist sailors up 6 the mast to work on sails? 7 A. My understanding, sir, is that trigger latch 8 shackles are not used for that purpose. 9 Q. I want to make sure I understand your answer. 10 Are not to be used or are not used? 11 A. Not used. 12 Q. Has anyone ever told you -- 13 MR. WICKENS: Don't we have that for 14 somebody else? You have that in your notice. 15 A. Matthew was to talk about that. 16 MR. WICKENS: If you are going to ask 17 everybody on here every single question you are 18 going to be here for a long time. 19 MR. THOMPSON: We will narrow it, but 20 we may be here a while. 21 Q. (By Mr. Thompson) Do you have any documents in 22 your possession or are you aware of any 23 documents in the company that would indicate 24 that the trigger latch shackle has ever been 25 used to hoist sailors up the mast?</p>	<p style="text-align: right;">Page 96</p> <p>1 and I won't interrupt you. 2 MR. THOMPSON: Yes. 3 A. You are better talking to Matthew Townsend with 4 discussions particularly with him that this has 5 come up. 6 Q. (By Mr. Thompson) Okay. But you understood 7 from Mr. Townsend that a plunger shackle is 8 sometimes used in hoisting a sailor up a mast? 9 A. Very occasionally. 10 Q. But is Mr. Townsend the origin of your 11 understanding that that sometimes occurs? 12 A. No. I have also spoken to Mr. Weeden, who is 13 also an experienced sailor. They have said 14 neither of them would consider doing it 15 themselves. 16 Q. They were aware that some people do that? 17 MR. ROBB: I am going to object. 18 That calls for speculation as to what someone 19 else may have been aware of. 20 Q. (By Mr. Thompson) Did they tell you they were 21 aware of that occurring? 22 A. That it occasionally occurred, yes. 23 Q. Are you aware of duct tape ever being used to 24 wrap around a trigger latch shackle to prevent 25 it from opening?</p>

<p style="text-align: right;">Page 97</p> <p>1 A. What is duct tape, sir?</p> <p>2 Q. Gray tape. I don't know whether it's call the same thing in Britain but just a heavy, sticky tape that is called duct tape in the United States.</p> <p>3 A. Okay. I am not aware of it, no, sir.</p> <p>4 Q. None of your sailor friends have told you that 5 duct tape is sometimes wrapped around?</p> <p>6 A. No, sir.</p> <p>7 (Recess).</p> <p>8 Q. (By Mr. Thompson) I am going to hand you, sir, what's been marked as Exhibit 87 -- or Exhibit 10, and I want to ask you about a number 87 that is inscribed on the exhibit. Do you know what that number means?</p> <p>9 A. That would designate when it was manufactured.</p> <p>10 Q. So that one was manufactured in 1987. Is that correct?</p> <p>11 A. I believe so. Mr. Gibson would give you a -- (Off the record).</p> <p>12 Q. (By Mr. Thompson) You are pointing out, sir, that Exhibit 10 says what?</p> <p>13 A. L-8.</p> <p>14 Q. Okay. L-8. Do you know what L-8 means?</p> <p>15 A. It will specify the year of manufacture.</p>	<p style="text-align: right;">Page 99</p> <p>1 A. it says, use spike to open?</p> <p>2 A. Uh-huh.</p> <p>3 Q. On both sides as you pointed out earlier. It 4 only says it on one side on Exhibit 300. Is 5 that right?</p> <p>6 A. That is correct, sir.</p> <p>7 Q. Do you know why the change?</p> <p>8 A. No, I do not, sir.</p> <p>9 Q. And do you know what model number Exhibit 300 10 is?</p> <p>11 A. No, sir. I will have to read it on the back.</p> <p>12 Q. Would you read it and please tell us?</p> <p>13 A. 19512000.</p> <p>14 Q. Is it your understanding that that is the same 15 model of trigger latch shackle that was used as 16 a part of the harness system in connection with 17 the accident that occurred in Kansas City?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know what model Exhibit 10 is?</p> <p>20 A. It's the same one, sir.</p> <p>21 Q. Is there anything on that that tells you or is 22 it just by looking at it?</p> <p>23 A. Just by looking at it, sir.</p> <p>24 Q. Are there any product catalogs utilized by any 25 of the Lewmar or Lewmar related companies that</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. Do you know what the year was?</p> <p>2 A. No, sir.</p> <p>3 (The reporter marked Deposition 4 Exhibit No. 300 for identification.)</p> <p>5 Q. (By Mr. Thompson) I am going to hand you what's 6 been marked as Defendant's Exhibit 300. And is 7 that also a Lewmar trigger latch shackle?</p> <p>8 A. Yes, sir, it is.</p> <p>9 Q. And does it have a number or letters inscribed 10 on it in a similar to Exhibit 10?</p> <p>11 A. It says 97F.</p> <p>12 Q. Do you know what the significance of those 13 numbers and the F mean?</p> <p>14 A. Again, it would be the year of manufacture.</p> <p>15 Q. Okay. So that was 1997?</p> <p>16 MR. HARRIS: If you know.</p> <p>17 A. I don't know.</p> <p>18 Q. (By Mr. Thompson) Is it your understanding from 19 the company that that would tell you that the 20 trigger latch shackle was manufactured in 1997?</p> <p>21 A. That would tell you the year it was 22 manufactured. Mr. Gibson will confirm. I 23 presume it does mean '97.</p> <p>24 Q. One point that I see differently between Exhibit 25 10 and Exhibit 300. I see on Exhibit 10 where</p>	<p style="text-align: right;">Page 100</p> <p>1 exhibit trigger latch shackles other than what 2 has been produced here today, and specifically 3 I'm talking about the 1998 and 1999 catalogs?</p> <p>4 Are there any other catalogs that have trigger 5 latch shackles in them, Lewmar trigger latch 6 shackles?</p> <p>7 A. No, sir.</p> <p>8 Q. How about Nordsman Gibb's trigger latch 9 shackles?</p> <p>10 A. The Nordsman Gibb marine catalog has.</p> <p>11 Q. Is there any non-marine sales? And I don't want 12 to get caught up just on catalog, brochures, 13 listings, documents or information where the 14 Nordsman Gibb trigger latch shackle is 15 advertised or marketed in non-marine 16 applications?</p> <p>17 A. I am not aware that there are any non-marine 18 marketing uses for the Nordsman Gibb trigger 19 latch shackle.</p> <p>20 Q. Okay. So the answer is no, there are no other 21 catalogs?</p> <p>22 MR. HARRIS: I object to the 23 question, asked and answered. He answered it.</p> <p>24 Q. (By Mr. Thompson) Is that right, sir?</p> <p>25 A. Yes, it is.</p>

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1 Q. Besides '98 and '99 -- I want to make sure we 2 are clear, '96, '97, 2000, are you aware of any 3 other catalogs or advertisements that show 4 non-marine use of trigger latch shackles beyond 5 the marine catalogs? 6 MR. HARRIS: Are we talking about 7 Nordsman Gibb? We talking about Lewmar? 8 MR. THOMPSON: Both. 9 MR. HARRIS: I object to the form of 10 the question, overly broad and irrelevant. You 11 can answer. 12 A. No, sir. 13 Q. (By Mr. Thompson) Would you please look at 14 Exhibit 31, please. I would like to direct your 15 attention to the paragraph three that Mr. Robb 16 asked you to read before. 17 A. (Witness complies). 18 Q. Am I correct in understanding that this patent 19 states that the shackles are used especially in 20 marine sports? 21 A. Yes, sir. 22 Q. Have you had any discussion with anybody in the 23 company as to whether -- the meaning of the term 24 especially? Is it limited to marine sports? 25 A. I have had no discussions as to the meaning of	1 Otherwise it's vague, ambiguous, lacks 2 foundation. 3 Q. (By Mr. Thompson) What it says, sir, in the 4 patent application is that the shackles are used 5 especially for marine applications, do you have 6 any understanding of the meaning of the word 7 especially? 8 MR. ROBB: Well, I am going to object 9 to the extent, as Mr. Harris pointed out it 10 lacks foundation, specifically to the extent 11 that he has not been shown to have any 12 experience with patent or trademark to know 13 whether or not that is some term of art within 14 that particular industry. 15 Q. (By Mr. Thompson) Do you have any understanding, 16 sir? 17 A. I do not understand that it is any different to 18 using the word in any other context. 19 Q. And especially, what does it mean to you in any 20 other context? 21 MR. HARRIS: Same objection. 22 A. Particularly, in particular. 23 Q. (By Mr. Thompson) Primarily, but not 24 exclusively? Would this be a fair 25 characterization?
Page 102	Page 104
1 the word. 2 Q. Do you have any opinion personally as to whether 3 there are any other uses? 4 A. I am not aware of any other uses. 5 Q. You are aware of the uses that Action 6 Specialists put the trigger latch shackles to. 7 Is that correct? 8 A. Yes. 9 MR. HARRIS: I object to the form of 10 the question. Vague as to time. Let's make 11 sure we know what timeframe we are talking 12 about. 13 Q. (By Mr. Thompson) What do you understand the 14 word "especially" to mean, sir? 15 MR. ROBB: I object to the fact that 16 it lacks any conceivable context or parameters 17 for him to be able to reasonably answer that 18 question. 19 MR. HARRIS: Bob, are we talking 20 about the patent application again, or are you 21 just talking generally about the definition of 22 the word especially to Mr. Swales personally. 23 MR. THOMPSON: Mr. Swales. 24 MR. HARRIS: Separate and part from 25 what it means for a patent application.	1 A. Yes, sir. 2 Q. You understand how a lanyard was used in 3 connection with Exhibit 10, the trigger latch 4 shackles? 5 MR. ROBB: I am going to object to 6 the fact that is outside of the scope of what 7 this witness is designated for. 8 MR. THOMPSON: He answered the 9 Interrogatories that discussed the use of the 10 lanyard, and you inquired with him about the 11 patent application, which also discusses the use 12 of the lanyard. 13 MR. ROBB: That is within the notice. 14 MR. HARRIS: Mr. Swales is the 15 finance director and as such signed the 16 Interrogatory Answers on behalf of the company. 17 We are here on corporate representative 18 depositions, and we have already told you what 19 categorize Mr. Swales is here to talk about. 20 And how to use a lanyard or not use a lanyard 21 under what circumstances, what application, that 22 is an engineering or technical area which 23 Mr. Gibson can talk about. So why don't we not 24 waste time in asking the finance director about 25 a technical engineering type question.

<p style="text-align: right;">Page 105</p> <p>1 MR. THOMPSON: I will move on.</p> <p>2 Q. (By Mr. Thompson) me ask you this. Are you 3 aware of any policies or procedures regarding 4 the distribution of the snap shackle by Lewmar?</p> <p>5 MR. HARRIS: Are we talking about the 6 trigger latch shackle or every trigger --</p> <p>7 MR. THOMPSON: Trigger latch shackle.</p> <p>8 Q. (By Mr. Thompson) Does the company have any 9 policies or procedures in place regarding the 10 distribution of trigger latch shackles?</p> <p>11 A. We have no policies regarding particularly the 12 distribution of trigger latch shackles.</p> <p>13 Q. And do you have any -- are you aware after the 14 1998 meeting we talked about earlier in which it 15 was discussed that non-marine applications 16 should be limited, are you aware of any policy 17 that was put in place regarding that issue?</p> <p>18 A. I am not, sir.</p> <p>19 Q. Did management put any formal writings out other 20 than the memorandum that was sent to 21 distributors and agents in Holland regarding the 22 distribution of the snap shackles?</p> <p>23 A. I wasn't an employee of the company on that 24 date, sir. I'm not aware.</p> <p>25 Q. But you have been designated as the person with</p>	<p style="text-align: right;">Page 107</p> <p>1 were our brokers.</p> <p>2 Q. Have you undertaken to find out what the 3 insurers told the company about making sure that 4 there were non- -- that non-marine applications 5 were not utilized for the trigger latch 6 shackles?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you know who the person at Aon Risk Services 9 was that communicated with Lewmar?</p> <p>10 A. If there was a communication, I do know who it 11 would be.</p> <p>12 Q. Who would that have been?</p> <p>13 A. A gentleman called Phil Roberts.</p> <p>14 Q. Have you researched and reviewed the files of 15 the company to determine if there was any 16 communication between the insurance company and 17 Lewmar regarding non-marine use of trigger latch 18 shackles?</p> <p>19 A. No, sir.</p> <p>20 MR. ROBB: Excuse me. I need to 21 interpose an objection, Bob, in terms of all the 22 insurance. Can I just have a continuing 23 objection on that for relevance, foundation and 24 scope grounds? I just don't want to interrupt 25 you every time. Bob?</p>
<p style="text-align: right;">Page 106</p> <p>1 most knowledge about the policies and 2 procedures.</p> <p>3 A. Yes.</p> <p>4 Q. And have you undertaken to determine if any 5 existed?</p> <p>6 A. I am not aware that any existed.</p> <p>7 Q. Okay. That is a result of an effort to find 8 out; is that right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did you have an understanding that the insurers 11 of the company instructed Lewmar to make sure 12 that the trigger latch snap shackles were not 13 used in non-marine applications?</p> <p>14 A. What timeframe are we talking?</p> <p>15 Q. Well, in 1996 have you learned that the insurers 16 raised the issue?</p> <p>17 A. I am not aware that they did.</p> <p>18 Q. I would like for you take a look at Exhibit 124.</p> <p>19 You see that that references --</p> <p>20 A. Yes.</p> <p>21 Q. -- the insurers. Do you know who the company's 22 insurers were at the time?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Who were they?</p> <p>25 A. It was through Aon, A-O-N, Risk Services, who</p>	<p style="text-align: right;">Page 108</p> <p>1 MR. THOMPSON: Yes. Thank you.</p> <p>2 MR. HARRIS: And Bob, I want to make 3 sure what timeframe we are talking about. Your 4 question did not have any timeframe whatsoever. 5 So if we are talking about post Owen Hart 6 incident, then that would include the 7 insurer/insured work product privilege area.</p> <p>8 MR. THOMPSON: Well, I specifically 9 was tying it to 1996 when, as I understand from 10 Exhibit 124, Lewmar's insurer advised you to 11 take every possible step to insure that Lewmar's 12 products were used only for the purpose in which 13 they were designed.</p> <p>14 Q. (By Mr. Thompson) Is that your understanding of 15 what the insurers told Lewmar?</p> <p>16 A. I cannot say what the insurers told us. It may 17 have been that it was used to reinforce the 18 message we were sending to our subsidiaries.</p> <p>19 Q. Well, the message that was sent to -- the, memo 20 Exhibit 124, that was sent to your subsidiaries 21 said that the insurers had told you to use every 22 possible step necessary. Is that correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And the only step that you are aware of that was 25 taken was that Exhibit 125 and 124 were sent to</p>

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1 the Holland agents and distributors. Is that 2 right? 3 A. Yes, sir. 4 Q. And so in terms of taking every possible step 5 necessary, sending out Exhibit 124 and 125 is 6 all that you know that was done. Is that right? 7 A. Yes, sir. I would like to reiterate that the 8 message about the insurers may simply been 9 put in to reinforce our message. It may not 10 have come from the insurers. 11 Q. Okay. So you are saying that somebody in the 12 company might have put in there that the 13 insurers told you to do that, even though that 14 might not have been true? 15 A. I can envision it, yes, sir, but it strengthens 16 what you are saying to your subsidiaries. 17 Q. Do you know or not know whether or not the 18 insurers -- 19 A. I don't know. 20 Q. -- instructed you to do that? 21 A. I'm not aware. 22 Q. Have you undertaken any efforts to find out? 23 A. No, sir. 24 Q. And in terms of at the time that the letter -- 25 and again I'm talking about Exhibit 124 -- was	1 personal knowledge as to this witness. 2 MR. THOMPSON: And to the extent that 3 this is an issue later we reserve our response 4 to that objection so that we can raise the issue 5 at a different time. 6 MR. ROBB: Sure. 7 Q. (By Mr. Thompson) Are you aware of any claims 8 made against Lewmar beyond this lawsuit as a 9 result of any claimed failure of a trigger latch 10 shackle? 11 A. No, sir. 12 Q. Never -- 13 MR. ROBB: I am going to object to 14 the extent that the claim is not as to the 15 failure of a trigger latch shackle. I think it 16 misstates what the claim is and to that extent 17 lacks foundation on this record. 18 Q. (By Mr. Thompson) Let me make this so it would 19 be even broader. Even if there was not a claim 20 that the shackle failed, beyond this lawsuit, 21 are you aware of any claims involving any kind 22 of accident in which a trigger latch shackle was 23 utilized? 24 A. The only incident we are aware of is the bungee 25 jumping, and we are not certain that that was a
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1 sent out, do you know if any effort was taken to 2 communicate the same message to the other 3 subsidiaries at Lewmar Limited? 4 A. I am not aware, sir. 5 Q. You are not aware of any steps being taken to 6 communicate that message? 7 A. If there was resources. 8 Q. And in terms of establishing any policy or 9 procedure to make sure that non-marine 10 applications were not -- the trigger latch 11 shackles were not utilized for non-marine 12 applications, you are not aware of any policy or 13 procedure that was put in place other than to 14 the extent this could be construed as policy and 15 procedure? 16 A. No, sir. 17 Q. When I say this, we are talking about Exhibit 18 124 and 125. 19 MR. ROBB: Are we done with the 20 insurance stuff? Very briefly, plaintiffs would 21 move to strike reference to insurance or 22 insurers in the last number of questions as 23 cummulative outside of the scope of this 24 witness' designation, outside of the notice, 25 irrelevant and further lacking foundation for	1 trigger latch shackle. 2 Q. Do you know what steps or did the company take 3 any steps to try and determine the circumstances 4 surrounding the bungee jumping accident? 5 A. I am not aware what steps were taken. You may 6 find that Mr. Gibson and Mr. Townsend have 7 better knowledge on that. 8 MR. ROBB: Let me just interpose an 9 objection to the extent that I don't believe 10 there has been a foundation on this record that 11 it was a trigger latch shackle involved with the 12 bungee jumping incident, so to that extent then 13 there would be a lack of foundation on this 14 record. 15 Q. (By Mr. Thompson) How many kinds of snap -- you 16 have said, I think, earlier that snap shackles 17 is a generic term? 18 A. Yes, sir. 19 Q. What different forms of snap shackles are there? 20 Is the trigger latch shackle a form of a snap 21 shackle? 22 MR. ROBB: I am going to object to 23 the extent that this is outside. This is an 24 engineering technical matter. This is the 25 finance director. I think it is clearly outside

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1 of the designated subject matter. 2 MR. HARRIS: If we are just talking 3 very basic information, Bob, I will let him 4 answer. 5 MR. THOMPSON: We are. 6 MR. HARRIS: You can get this 7 information from Mr. Gibson or Mr. Townsend. 8 A. My understanding is that there is the trigger 9 latch shackle, and there is a plunger shackle, 10 which is the one I have here. 11 Q. (By Mr. Thompson) And they would both be -- 12 could be generically referred to as snap 13 shackles? 14 A. Yes, sir. 15 Q. Those are the only two to your understanding, 16 two forms? 17 A. To my understanding. 18 Q. I want you to take a look, please, sir, at 19 Exhibit 124. And it says to who? 20 A. Dear sir. 21 Q. No. I'm sorry up here where it says to 22 Achternaam; is that right? Am I reading that 23 correctly? 24 A. You may be. 25 Q. Do you know who that is?	1 A. I presume it was her, yes, sir. 2 Q. Do you know where she got it? 3 A. Again I can give you a presumption that it came 4 from Mr. van der Linde. 5 Q. Have you had any conversations with Mr. van der 6 Linde about the bungee jumping accident? 7 A. No, sir. 8 Q. Have you asked Mr. van der Linde if he is aware 9 of any other non-marine uses of trigger latch 10 shackles? 11 A. No, sir. 12 Q. Have you asked any of the other directors of the 13 Lewmar subsidiaries if they are aware of any 14 non-marine uses for trigger latch shackles? 15 A. No, sir. 16 Q. You don't know if they are aware or not; you 17 haven't asked. Is that right? 18 A. That is correct. 19 Q. After Exhibit 246 was sent out -- Now, would 20 that have gone to all the subsidiaries? 21 A. Yes, sir. 22 Q. Okay. And this is the one that was after the 23 Owen Hart accident that was sent to all the 24 subsidiary managers telling them not to sell the 25 trigger latch shackles for non-marine
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1 A. I am afraid I don't speak Dutch. 2 Q. Do you know if that's an employee of Lewmar? 3 A. No. 4 Q. Who does the memo, Exhibit 124 purport to be 5 from? 6 A. From Hendrik van der Linde. 7 Q. And Hendrik van der Linde is who? 8 A. He is the manager of the Dutch subsidiary. 9 Q. Okay. And so have you had any discussions about 10 Exhibit 124 with Mr. van der Linde? 11 A. No, sir. 12 Q. How did you obtain a copy of Exhibit 124? Where 13 did you actually get that document? Let me just 14 start this way. Have you seen it before today? 15 Have you seen a copy -- 16 A. I have seen it before today. 17 Q. And did you gather it in connection with 18 producing documents in connection with this 19 lawsuit? 20 A. I didn't, but that is when it was gathered. It 21 was gathered prior to my taking over. 22 Q. Do you know, was that Ms. Waters that gathered 23 it? 24 A. Watts. 25 Q. Ms. Watts?	1 applications without prior approval. Is that 2 right? 3 A. Yes, sir, and included products other than the 4 trigger latch shackle. 5 Q. Okay. And have you had any response from those 6 subsidiary managers that you are aware of? 7 A. I have had no response back. 8 Q. Are you aware of anybody else in the company 9 having a response at which they reported back 10 that they either had or had not raised any 11 questions about Exhibit 246? 12 A. No, sir. 13 Q. Who is Helen Holt? 14 A. She was -- I'm sorry. She is now Helen Watts. 15 She got married as I remember. 16 Q. Okay. Have you had any discussion with 17 Ms. Watts to determine whether or not she 18 received any response after she sent out Exhibit 19 246? 20 A. No, sir. 21 Q. So she may have; you just don't know? 22 MR. ROBB: Objection. That calls for 23 utter speculation on behalf of this witness. 24 Q. (By Mr. Thompson) She may have or may not have. 25 You don't know one way or the other is what I
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<p style="text-align: right;">Page 117</p> <p>1 want to make clear. Is that right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. You told Mr. Robb in your opinion it would be 4 lunacy to use the trigger latch shackle in a 5 bungee jump.</p> <p>6 A. Lunacy for anyone to do it, yes.</p> <p>7 Q. Is there anything specific about the trigger 8 latch shackle that would make it lunacy to use 9 it?</p> <p>10 A. Because it is a product that is designed to be 11 used under load.</p> <p>12 Q. I will save that for Mr. Gibson. With regard to 13 the subsidiaries, five subsidiaries you 14 identified, do you know what the nature of the 15 corporate relationship is? Are they wholly 16 owned subsidiaries?</p> <p>17 A. At what time point?</p> <p>18 Q. Well, let's start --</p> <p>19 A. It has changed.</p> <p>20 Q. Presently.</p> <p>21 A. Okay. Presently the Swedish operation is a 22 wholly owned subsidiary of Lewmar Marine 23 Limited, which is the same holding company as 24 Lewmar Limited. The French and Dutch operations 25 are branches of Lewmar Limited. The UK is</p>	<p style="text-align: right;">Page 119</p> <p>1 clear, when you use the term fid, are you 2 talking about the spike?</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. (By Mr. Thompson) Are you aware of any 5 warranties?</p> <p>6 A. Warranties.</p> <p>7 MR. HARRIS: Warranties or warnings?</p> <p>8 Q. (By Mr. Thompson) Warnings, I'm sorry. Any 9 warnings contained in these catalogs.</p> <p>10 A. On the pages here there are no warnings.</p> <p>11 Q. And you are looking at the two catalogs that 12 were marked earlier in the day?</p> <p>13 A. I'm looking at a couple of pages from them, yes, 14 sir.</p> <p>15 MR. ROBB: I just want to state for 16 the record so it is clear that that is not meant 17 to be and was not offered as being the entire 18 catalog but only a designated cover page and one 19 attachment.</p> <p>20 Q. (By Mr. Thompson) Are you aware of any warnings 21 contained anywhere that are given to users of 22 the trigger latch shackle?</p> <p>23 A. I think this question should be aimed at 24 Mr. Gibson and Mr. Townsend.</p> <p>25 Q. My only question is are you aware, sir?</p>
<p style="text-align: right;">Page 118</p> <p>1 Lewmar Limited. And America is owned by the 2 same ultimate holding company as Lewmar.</p> <p>3 Q. So through various vehicles, Lewmar Limited or 4 its affiliates own the stock of the 5 subsidiaries?</p> <p>6 A. Yes.</p> <p>7 Q. Any of these companies publicly traded, these 8 subsidiaries?</p> <p>9 A. No, sir.</p> <p>10 Q. Are you aware of any warnings that are provided 11 to users of the trigger latch shackles?</p> <p>12 A. Beyond the warning on the shackle itself and 13 comment in the catalog, no, sir.</p> <p>14 Q. What comment in the catalog are you referring 15 to?</p> <p>16 A. I have seen catalogs that show the two main 17 uses, the fid --</p> <p>18 Q. Why don't you look at these two catalogs that 19 were marked earlier. Do you see anything in 20 those catalogs that you believe consists of a 21 warning to users of the product?</p> <p>22 MR. HARRIS: And I believe this is 23 also an area that Mr. Townsend was designated to 24 discuss as the actual distribution and sale of 25 the product. By the way, so the record is</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I have seen things in older catalogs. I don't 2 know if they are in this one or not.</p> <p>3 Q. You have seen warnings contained in older 4 catalogs?</p> <p>5 A. I have seen drawings showing how to use the 6 trigger latch shackle.</p> <p>7 Q. Please describe those drawings to me.</p> <p>8 A. There was one showing a fid or spike going in 9 and one showing a hand going in, finger.</p> <p>10 Q. Were those contained in Lewmar catalogs?</p> <p>11 A. I believe so.</p> <p>12 Q. Do you know what year those catalogs were?</p> <p>13 A. No, sir.</p> <p>14 Q. Are you aware of any warnings that were 15 distributed to any user or seller of trigger 16 latch shackles that warned against non-marine 17 use or applications other than the memos that 18 have been marked here already today?</p> <p>19 A. Other than the statement in our warranties at 20 the back of the catalog, no, sir.</p> <p>21 (The reporter marked Deposition 22 Exhibit No. 301 for identification.)</p> <p>23 Q. (By Mr. Thompson) I am going to hand you what's 24 been marked as Defendant's 301. Does this 25 contain the warranty information that you are</p>

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1 referencing?	1 back after a short lunch break, but I want to
2 MR. HARRIS: Again, I want to make	2 ask you about warnings, and I think just before
3 sure I heard you correctly. Did you say warning	3 the break you mentioned that you believed there
4 or warranty?	4 was a warning on the trigger latch shackle
5 MR. THOMPSON: I think it uses both.	5 itself. Is that what you said?
6 My question is, is he aware of any warning, and	6 A. Yes, sir.
7 he said only in connection with the warranty.	7 Q. Okay. What words or language are you referring
8 A. I think I was mistaken, and so it should be in	8 to? We can use both Exhibits 10 and -- would
9 the terms and conditions, which this is not a	9 you hand me that one please -- and Defendant's
10 full list of our terms and conditions.	10 Exhibit 300.
11 Q. (By Mr. Thompson) Okay. So you believe there	11 A. They both say, use spike to open.
12 is a warning regarding non-marine use in the	12 Q. Okay. And so you'd agree that -- and on Exhibit
13 terms and conditions?	13 300, it says it on one side and not the other?
14 A. There is a statement along the lines of intended	14 A. Yes, sir.
15 use.	15 Q. And that is a warning with regard to how to open
16 Q. What is your recollection of what that document	16 the trigger latch shackle; is that correct?
17 says? Mr. Harris, are you pointing at the --	17 A. Yes, sir.
18 MR. HARRIS: I think I know what	18 Q. Do you contend that that's a warning that
19 language he is referring to.	19 relates to the intended use of the product?
20 Q. (By Mr. Thompson) Has it been pointed out to	20 A. No. It's a warning as to how you should open
21 you language that you believe is the intended	21 the snap shackle.
22 use language?	22 Q. It doesn't tell a potential user not to use this
23 A. Yes, sir.	23 product in non-marine applications, does it?
24 Q. Now, would you read for us -- you are reading	24 A. No, sir.
25 from Defendant's Exhibit 301?	25 Q. Is it appropriate to use a lanyard to open the
1 A. Okay. It says failures due to use of products	Page 124
2 in applications for which they are not intended.	1 trigger latch shackle?
3 Q. Is that the extent of the warning language that	2 MR. HARRIS: I object to the form of
4 you are referring to?	3 the question. Lacks foundation.
5 A. Yes, sir.	4 MR. ROBB: Outside of the scope of
6 Q. It doesn't say what use is not intended, does	5 the designation because it calls for a
7 it?	6 engineering or technical opinion or statement.
8 A. No, sir, but it relates to the whole catalog,	7 MR. HARRIS: I join that, and I also
9 not a single item.	8 indicate that Mr. Gibson and/or Mr. Townsend
10 Q. But it doesn't say to what use it is intended;	9 will talk about that.
11 it just says that if you use it for an	10 Q. (By Mr. Thompson) Do you know, sir, if it is
12 unintended use, you are not going to warranty	11 improper to use a lanyard to open a trigger
13 the product. Is that right?	12 latch shackle?
14 MR. ROBB: I object to the form of	13 A. My only knowledge is from discussions with the
15 the question that the extent that it is	14 other gentlemen.
16 argumentative, and the warranty language speaks	15 Q. I am going to hand you what has been marked as
17 for itself.	16 Exhibit 303. It's Bates numbers LL 0215 through
18 Q. (By Mr. Thompson) You can answer.	17 217. What is that document, sir?
19 A. The warranty is in a marine catalog, but no,	18 A. There is a copy of a sales order to Action
20 beyond that it does not list unintended uses.	19 Specialists.
21 (Recess).	20 Q. Okay. And it says, W/C sales order at the top.
22 (The reporter marked Deposition	21 Is that correct?
23 Exhibits Nos. 302 through 320 for	22 A. Yes, sir.
24 identification.)	23 Q. And it's dated 2/28/98. Correct?
25 Q. (By Mr. Thompson) I want to go back. We are	24 A. Yes, sir.
	25 Q. Now, what does W/C stand for?

<p style="text-align: right;">Page 125</p> <p>1 A. I have to say I'm not sure, sir. It may have 2 been an Americanism. 3 Q. Now, this is a sales order from who to Action 4 Specialists? 5 A. It is to Action Specialists. 6 Q. Okay. Who was the seller under this sales 7 order? 8 A. Lewmar Marine, Inc. 9 Q. All right now. So pursuant to this document, 10 Lewmar Marine, Inc., was selling the parts 11 listed on the sales order to Action Specialists 12 on or about February 2nd, 1998. Is that right? 13 A. Yes, sir. 14 Q. And what is Lewmar Marine, Inc., known as today? 15 A. Lewmar, Inc. 16 Q. Lewmar, Inc.? 17 A. Yes. 18 Q. So that is the American subsidiary of Lewmar 19 Limited? 20 A. Yes, sir. 21 Q. Down in the middle where it says description, 22 you see it says 50 percent discount, and then 23 set up as a tech center. Do you see those 24 words? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 127</p> <p>1 A. I don't know. 2 Q. Have you ever seen this sales order agreement 3 before? 4 A. Yes, sir. 5 Q. And have you discussed it with anyone? 6 MR. ROBB: Well, I am going to object 7 to that to the extent that it clearly 8 encompasses discussions with counsel, and I 9 don't think he should be allowed to testify 10 about it. 11 Q. (By Mr. Thompson) Have you discussed this 12 agreement with anyone other than your counsel? 13 A. No. 14 Q. If you would, look at the third page LL 0217. 15 It says special instructions John Kethan. Do 16 you see that? 17 A. Yes, sir. 18 Q. Who is John Kethan? 19 A. I don't know. 20 Q. And then the second, next one, old style trigger 21 shackles, do not substitute Gibb stock. Do you 22 know what that means? 23 A. I presume that it is a request to use the old 24 stock after we changed from Lewmar to Gibb 25 production.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. All right. What does 50 percent discount and 2 set up as a tech center mean in the context of 3 this sales order? 4 A. 50 percent discount means a 50 percent discount 5 off retail price. 6 Q. Does that suggested Action Specialists is a 7 wholesaler? 8 A. I don't know what the discount structure is in 9 America. Mr. Townsend may have a better guess. 10 Q. All right. Would it be Lewmar's practice to 11 provide a 50 percent discount to a retail 12 account? 13 MR. HARRIS: If you know. Again, 14 this is not an area that you were designated to 15 discuss. 16 A. I don't think -- Lewmar certainly would provide 17 a discount to somebody who was retailing our 18 product because retail price list is designed to 19 be the price the end user pays for the product. 20 Q. (By Mr. Thompson) Okay. But a 50 percent 21 discount off the price would suggest, wouldn't 22 it, that Action Specialists was going to offer 23 the product for retail? 24 A. Not necessarily, sir, no. 25 Q. What does set up as a tech center mean?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Did you change from Lewmar to Gibb in 1999? 2 A. 1998. 3 Q. When in 1998? 4 A. Again, Mr. Townsend is the person to talk to. 5 Q. Do you have any knowledge as to why there would 6 be special instructions not to substitute Gibb 7 stock for the old style trigger shackle? 8 A. As I just said, I presume it is, so that we use 9 the old stock first. 10 Q. Then the last line is special instructions in 11 UK. Do you know what that means? 12 A. Well, no. It is -- the lines run together. Old 13 style shackle; do not substitute Gibb stock in 14 UK. It's not a separate -- it is not an 15 independent instruction. 16 Q. Taken together, does that instruction -- 17 A. Same answer. 18 Q. The same answer? 19 A. Yeah. 20 Q. Were you substituting Gibb's stock in the United 21 States but not in the United Kingdom? 22 A. No. I didn't say we were substitute the Gibb's 23 stock. What I said was that we were changing 24 from Lewmar to Gibb, and it makes sense to get 25 rid of the Lewmar stock before you start selling</p>

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1	the Gibb stock.	1	United States subsidiary; is that correct?	
2 Q.	I agree, but my question -- I didn't mean to	2 A.	Yes.	
3 suggest that you did say that, but if that's	3	Q.	Is this a customer list that you can access here	
4 what you understand it to mean, where it says in	4	A.	in the United Kingdom?	
5 UK, does that suggest to you that you were	5	Q.	We could do so, yes.	
6 substituting the Gibb stock in places outside	6	Q.	I mean, as finance director your computers are	
7 the UK?	7	A.	networked with the United States subsidiary such	
8 A.	No.	8	that you could print this list off as well?	
9 Q.	Were the sales orders filled out of the United	9	Q.	I wouldn't. We could do it, yes, sir.
10 States subsidiary, or are they filled out of the	10	Q.	A little more than halfway down on LL 0146, you	
11 United Kingdom?	11	A.	see the Action Specialists entry?	
12 MR. HARRIS: Once again, sales is an	12	A.	Yes, sir.	
13 area Matthew Townsend was designated to respond	13	Q.	And it says, do not ship to this account per R.	
14 to. I don't think we need to --	14	A.	Blanton, 6/99. Is that correct?	
15 MR. THOMPSON: I don't think that's	15	A.	Yes, sir.	
16 right, Mark.	16	Q.	Did you have any discussions with Mr. Blanton	
17 MR. HARRIS: I know that's right. If	17	A.	prior to this notation being put on the customer	
18 you want to talk about distribution and sales,	18	Q.	shipping list?	
19 Matthew Townsend is going to be responding to	19	A.	No, sir.	
20 it. So --	20	Q.	Do you know if anyone in Lewmar Limited did have	
21 A. Am I to answer?	21	A.	those here in the United Kingdom, did have any	
22 Q. (By Mr. Thompson) You can answer. Do you know,	22	Q.	discussions with Mr. Blanton about this entry?	
23 sir, whether or not sales orders are filled out	23	A.	I don't know, sir.	
24 of the United Kingdom or the United States?	24	Q.	Subsequent to its entry on the customer shipping	
25 MR. ROBB: Objection. Outside of the	25	A.	list not to ship to Action Specialists, have you	
	Page 130		Page 132	
1 scope of the notice.	1	had any discussions with Mr. Blanton about this		
2 MR. HARRIS: Same objection. Go	2	decision?		
3 ahead and respond.	3	A.	No, sir.	
4 A. They should be filled out of the stock in the	4	Q.	Can you through the computer system access the	
5 U.S. Clearly if stock isn't there, they	5	A.	entire purchase history for Action Specialists?	
6 wouldn't be.	6	A.	Yes, sir.	
7 Q. (By Mr. Thompson) Okay. Do you know where the	7	Q.	Am I correct in understanding this document as I	
8 stock of trigger latch shackles in the United	8	A.	look at LL 0146; that Action Specialists'	
9 States in 1998, where those shackles were	9	Q.	customer number is ACTI 001?	
10 manufactured?	10	A.	Yes, sir.	
11 A. They were manufactured in the UK.	11	Q.	And would you be able to enter that customer	
12 Q. And shipped to the United States for ultimate	12	A.	number --	
13 distribution?	13	Q.	No, sir, sorry. You are mistaken.	
14 A. Yes, sir.	14	Q.	Okay. In what? How am I mistaken?	
15 Q. At the time in 1998 did you have only one	15	A.	ACTI 0 01.	
16 manufacturing plant of trigger latch shackles?	16	Q.	ACTI 0 and then 01?	
17 A. You need to address that question to Mr. Gibson.	17	A.	Yes.	
18 Q. Okay. I am going to hand you what's been marked	18	Q.	Could you enter that customer number in the	
19 as Exhibit 304. If you would flip through these	19	A.	computer and pull down the entire transaction	
20 documents which are LL 0146 through -- well,	20	Q.	history of that customer?	
21 second page is LL 0146 through LL 0190. Can you	21	A.	It could be done, yes, sir.	
22 look at this document and tell me what it is,	22	Q.	Have you done that before you came here today?	
23 sir?	23	A.	Personally, no, sir.	
24 A. This looks like the Lewmar, Inc., customer list.	24	Q.	Do you know if anyone on your staff has done	
25 Q. And when you say Lewmar, Inc., again that is the	25	A.	that?	

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1 A. I'm not aware, sir.	1 the organizational chart under which the Lewmar
2 Q. Have you made any attempt before you came here	2 entities were arranged at the time of the
3 today to determine how many trigger latch	3 May 23rd, 1999, incident, because there have
4 shackles Action Specialists has ever purchased?	4 been some name changes, as I have already
5 A. I believe they have only purchased around 24.	5 advised all the parties of, as of January 1,
6 Q. Okay. That's what you referenced earlier?	6 2000.
7 A. Yes.	7 Q. (By Mr. Thompson) Did you see something you
8 Q. Do you know how you made that determination?	8 wanted to correct, sir?
9 A. I have seen two of the -- I believe they are	9 A. No. I was going to say this was the structure
10 invoices, two documents that relate to it.	10 when we were taken over by Clyde Shipping, which
11 Q. Do you know if that information was accessed off	11 was last June.
12 the computer system?	12 Q. I don't have any questions about it, but if we
13 A. It almost certainly had to be, sir.	13 could just get clean copies of the structure as
14 Q. Is there any way in reviewing this customer list	14 it existed then and now actually.
15 of knowing if any of the other customers listed	15 MR. SULLIVAN: You might just make a
16 on these approximately 45 pages were purchasing	16 general production. I don't think anybody's
17 trigger latch shackles for non-marine use?	17 copies are legible.
18 A. No, sir, there is not.	18 MR. HARRIS: Then it worked.
19 Q. Are you aware of any way that you could review	19 Q. (By Mr. Thompson) I will hand you Exhibit 306.
20 the invoices or the history of transactions in	20 Do you know what this document is, sir?
21 the company and determine from those invoices	21 A. Yes, sir.
22 whether or not your customers or clients were	22 Q. What is it?
23 using -- purchasing trigger latch shackles for	23 A. A hardware warranty claim fault report.
24 non-marine use?	24 Q. Have you ever seen these documents before, or
25 A. No, sir. No way.	25 documents like this?
Page 134	Page 136
1 Q. Beyond the notices sent out, which we have	1 A. No, sir.
2 talked about today, 124, 125, 246 and anything	2 Q. Is this something that is from Lewmar's business
3 included in your catalog, are you aware of	3 records?
4 anything that was done to tell the public the	4 A. Yes, sir. I should point out they are signed by
5 trigger latch shackles should not be used in	5 Mr. Townsend.
6 non-marine applications?	6 Q. Okay. And so you think I should talk to
7 A. No, sir.	7 Mr. Townsend about that?
8 Q. So whatever you've done, we have got in front of	8 A. Yes.
9 us here?	9 MR. HARRIS: You might want to start
10 A. Yes, sir.	10 with Mr. Gibson.
11 Q. I am going to hand you what has been marked	11 MR. SULLIVAN: What were the Bates
12 Exhibit 305. For the rest of you, these are	12 numbers of that exhibit?
13 the -- I think these are the corporate	13 MR. THOMPSON: This document is LL
14 organization charts. Is that correct?	14 000196 through 199.
15 A. Yes, it is.	15 MR. SULLIVAN: That exhibit was 306?
16 Q. And do you know when these were -- are these	16 MR. THOMPSON: Yes.
17 current for what time period?	17 Q. (By Mr. Thompson) Before I mark these, are all
18 A. I believe these are current certainly in	18 of the warranty claim forms more suitably
19 relation to the Lewmar Companies as today.	19 address today Mr. Gibson or Mr. Townsend?
20 MR. THOMPSON: Mark, just for the	20 A. Yes.
21 record, if we could, I can't read these. Could	21 Q. Okay. Then I will hold off on those. What was
22 you just provide us with better copies at some	22 the reason, if you know, for the name change to
23 point in the future?	23 Lewmar Limited?
24 MR. HARRIS: Yes. And for the	24 A. The reason for changing from Lewmar Marine
25 record, I believe this organizational chart was	25 Limited to Lewmar Limited is that if you look at

<p style="text-align: right;">Page 137</p> <p>1 our advertising, it's the Lewmar name on its own 2 which is effectively the logo, so they decided 3 to drop the "marine" from the title. 4 Q. Okay. So the current advertising of the Lewmar 5 Companies drops marine from the title? 6 A. Yes. 7 Q. Is there any effort under way to expand sales of 8 Lewmar products outside of the marine -- 9 A. No, sir. 10 Q. -- market? 11 A. No. 12 Q. I wanted to go back to the meeting in 1998 13 during which it was discussed that Lewmar snap 14 shackles should not be used outside of the 15 marine application. Is that right? 16 A. No, sir. What was discussed was Lewmar products 17 not being used outside the marine application. 18 Q. Who at Lewmar Limited -- or at the time it was 19 Lewmar Marine; is that correct? 20 A. Yes. 21 Q. Now Lewmar Limited, who ultimately had 22 responsibility for making sure that Lewmar 23 products were not used outside of the marine 24 application? 25 A. I guess ultimately responsibility lies with the</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Who is Mr. McMillan? 2 A. Mr. McMillan is the CEO of Clyde Shipping. 3 Q. Mr. Hartley's job -- why the change? Do you 4 know? 5 A. Because when we were bought out by Clyde 6 Shipping, they had other interests in America, 7 so they basically split responsibilities with 8 Simon, being UK, rest of the world, Arthur being 9 America. So it is just a change in reporting. 10 Q. And Mr. McMillan's first name is what? 11 A. Arthur. 12 Q. Arthur McMillan. And he has responsibility for 13 the American market? 14 A. Yes, sir. 15 Q. Where is Mr. McMillan officed? 16 A. Glasgow, Scotland. 17 Q. Are the catalogs -- we have seen some excerpts 18 of some of the catalogs today, Exhibit 30 and 19 Exhibit 29. Are these catalogs not intended for 20 the ultimate consumer, or are they wholesale 21 catalogs? 22 A. We would distribute the catalogs to our 23 customers, who are the boat builders or marine 24 distributors. They are available to the public 25 at boat shows, that kind of thing. They can be</p>
<p style="text-align: right;">Page 138</p> <p>1 CEO, but effectively it would be the subsidiary 2 managers. 3 Q. So subsidiary managers were to see that that 4 happened, but ultimately it was the 5 responsibility of the CEO to see that they did 6 their job? 7 A. Well, ultimately it's all their responsibility, 8 yes. 9 Q. The subsidiary managers, what is the reporting 10 structure? For instance, who does Mr. Blanton 11 report to? 12 A. At the time of the accident he reported direct 13 to Simon Hartley. 14 Q. Your CEO? 15 A. Yes. 16 Q. And Mr. Hartley again, he was the CEO in '98 as 17 well? 18 A. Yes. 19 Q. And Mr. Blanton was the subsidiary manager in 20 1998? 21 A. Yes. 22 Q. Mr. Blanton does not report to Mr. Hartley now? 23 A. No, he doesn't. 24 Q. Who does he report to? 25 A. Mr. McMillan.</p>	<p style="text-align: right;">Page 140</p> <p>1 picked up. No, they are aimed at our customers. 2 Q. So as a general matter, the retail purchaser 3 from your customers probably would not see the 4 catalog? Is that a fair statement? 5 A. To them it's only one would be if they happened 6 to go into a show that happened to have one on 7 show. 8 Q. As a general matter they would not be purchasing 9 the products from like a mail order catalog? 10 This would be something that would be at the 11 retailer for use -- 12 A. In the U.S. there are a couple of mail order 13 catalogs, but generally no. 14 Q. The mail order catalogs are they different than 15 the excerpts of the catalogs we are seeing here? 16 A. If it is a mail order catalog, it is not our 17 mail order catalog. 18 Q. Okay. It would be someone else's mail order 19 catalog that might include some of your 20 products? 21 A. Yes. 22 Q. But to the extent that Lewmar prepares a 23 catalog, these are it, and they are generally 24 intended for use by your customers, which are 25 the --</p>

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1 A. The boat builders or the distributors, yes.	1 corporation?
2 Q. Do you know if the trigger latch shackle like	2 MR. ROBB: Same objection to the
3 Exhibits 300 and 10 have ever appeared in mail	3 extent it might encompass attorney/client
4 order catalogs?	4 information. If he knows independently, that
5 A. I believe they have, but I do not know for	5 would be one thing.
6 certain.	6 MR. THOMPSON: He is not your client,
7 Q. What companies have mail order catalogs?	7 Gary, and I don't believe that is a proper
8 A. The main one in the states is West Marine.	8 objection interposed by plaintiffs' counsel.
9 Q. West?	9 MR. HARRIS: Well, I am going to
10 A. Marine.	10 oppose it. I don't believe you have changed
11 Q. Any others that you can recall?	11 your question in any respect, so since you
12 A. Not in America, no.	12 haven't, that would still invade the
13 Q. In any other country?	13 attorney/client privilege.
14 A. In the UK there's Simpson Lawrence, XM Yachting.	14 MR. THOMPSON: Well, I will move on,
15 In France, there's Technique Gremont. There	15 but for the record, facts simply because they
16 will be catalog companies in most areas.	16 are communicated by counsel do not become
17 Q. Do you know if any warning about purchasing the	17 privilege. Either AMSPEC did business through
18 trigger latch shackle for non-marine use is	18 your distributor or they didn't. And the fact
19 included in those catalogs?	19 that he may have learned it from you does not
20 A. I don't know, but they are all marine	20 make it privileged.
21 distributors.	21 Q. (By Mr. Thompson) Now, is Port Supply Limited
22 Q. Back to the exhibit in front of you, which is	22 Corporation a distributor of Lewmar products?
23 what exhibit?	23 A. I believe they are a subsidiary of West Marine,
24 A. 304.	24 which is a distributor of Lewmar products.
25 Q. I have a question. Port Supply Limited appears	25 Q. We are getting some invoices. Let me ask you to
Page 142	Page 144
1 as a customer on LL 0173. Could you find that,	1 take a look another LL 0179 on the exhibit in
2 please.	2 front of you, which is Exhibit 304. You see it
3 A. Yes.	3 is Svendsen's Boat Works, Inc.?
4 Q. Do you know anything about this customer?	4 A. Yes, sir.
5 A. I believe they are owned by West Marine.	5 Q. Am I pronouncing that correctly?
6 Q. Do you know if this is a customer that a company	6 A. I believe so.
7 called AMSPEC did business with?	7 Q. S-V-E-N-D-S-E-N-S?
8 MR. HARRIS: Any independent	8 A. Yes, sir.
9 knowledge of that?	9 Q. Do you know if Svendsen's Boat Works, Inc., is a
10 A. I have no independent knowledge of it.	10 distributor of Lewmar products?
11 MR. THOMPSON: Well, regardless of	11 A. Yes, they are.
12 the source of information, if he knows if their	12 Q. Have you -- do you know if Svendsen's sold
13 company did business with them, I am entitled to	13 Lewmar trigger latch shackles to a company
14 know that.	14 called AMSPEC or A & M Specialty Products?
15 MR. ROBB: I object to that. If it	15 MR. HARRIS: Same objection,
16 was information supplied by counsel that is not	16 attorney/client privilege.
17 in the course and scope of his employment, but	17 Q. (By Mr. Thompson) Are you refusing to answer?
18 through the attorney/client relationship.	18 MR. HARRIS: To the extent you have
19 MR. HARRIS: You might want to try	19 any personal knowledge information outside of
20 asking a timeframe or some other fashion, but	20 attorney/client privilege, you can respond to
21 that question invades the attorney/client	21 the question. Do you have any personal
22 privilege.	22 knowledge?
23 Q. (By Mr. Thompson) Have you determined, sir,	23 THE WITNESS: I don't have any
24 whether or not a company called AMSPEC purchased	24 personal knowledge.
25 trigger latch shackles from Port Supply	25 (The reporter marked Deposition

<p style="text-align: right;">Page 145</p> <p>1 Exhibit No. 321 for identification.)</p> <p>2 Q. (By Mr. Thompson) Let me hand you what has been 3 marked as Exhibit 321. Can you identify these 4 documents?</p> <p>5 MR. SULLIVAN: What are the Bates 6 numbers, please?</p> <p>7 MR. THOMPSON: These are Bates 8 numbers AM 00012 through 16.</p> <p>9 MR. HARRIS: For the record, since it 10 is clear these are documents that I believe 11 AMSPEC produced about a week or ten days ago --</p> <p>12 MR. THOMPSON: Correct.</p> <p>13 Q. (By Mr. Thompson) Have you ever seen these 14 documents before?</p> <p>15 A. I believe I have seen a copy of them.</p> <p>16 Q. And do these documents suggest that Port Supply 17 supplied trigger latch snap shackles to A & M 18 Specialty Products?</p> <p>19 MR. HARRIS: I object to the form of 20 the question. Documents speak for themselves. 21 Lack of foundation as to whether this witness 22 has any personal knowledge.</p> <p>23 MR. ROBB: Also it calls for 24 speculation to the extent that it asks him 25 whether or not it suggests, and I think it</p>	<p style="text-align: right;">Page 147</p> <p>1 you undertaken any effort to determine whether 2 or not that that is true?</p> <p>3 MR. HARRIS: Do you have any 4 knowledge outside the attorney/client privilege?</p> <p>5 A. I have no knowledge of it.</p> <p>6 Q. (By Mr. Thompson) And I just -- do you have any 7 knowledge whether that is true or false?</p> <p>8 MR. HARRIS: Same objection, same 9 instruction.</p> <p>10 A. I have no knowledge about whether it's true or 11 false.</p> <p>12 MR. THOMPSON: All right, Mark. Just 13 so we are clear, as long as this witness is not 14 going to show up and testify that I have done an 15 investigation and that contact did or did not 16 occur, I will let it go. But if he has 17 knowledge or is going to be a witness that is 18 going to testify about that, I am entitled to 19 inquire.</p> <p>20 MR. HARRIS: Well, my instruction was 21 on the basis of the broad question that you 22 asked, and the question invades the 23 attorney/client privilege. That was my 24 instruction to the witness. And if you have any 25 more questions, ask him. But I don't recall</p>
<p style="text-align: right;">Page 146</p> <p>1 requires him to assume.</p> <p>2 Q. (By Mr. Thompson) You can answer. Do you know?</p> <p>3 A. Well, the first one says, order refused. Two of 4 the three are credit memos.</p> <p>5 Q. Do you see where it says manufacturer name, 6 L-E-W-M-A?</p> <p>7 A. Yeah. I am reading on the handwritten part, 8 wrong part order, refused.</p> <p>9 Q. Yes, but I'm asking where it identifies 10 manufacturer name. Do you see L-E-W-M-A?</p> <p>11 A. Yes.</p> <p>12 Q. Then the manufacturer number, does that number 13 correspond to any Lewmar parts that you are 14 familiar with?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What part does it refer to?</p> <p>17 A. That is a trigger latch shackle.</p> <p>18 Q. Have you had any discussions with anyone at Port 19 Supply regarding their sale of trigger latch 20 snap shackles to A & M Specialty Products?</p> <p>21 A. I have not.</p> <p>22 Q. There has been testimony in this case that a 23 representative of AMSPEC contacted one of your 24 distributors regarding using trigger latch snap 25 shackles in connection with stunt work. Have</p>	<p style="text-align: right;">Page 148</p> <p>1 that being a topic on your notice that 2 Mr. Swales was going to talk about. But I don't 3 know what else I can tell you.</p> <p>4 Q. (By Mr. Thompson) Are you aware of any facts, 5 sir, that suggest that contact between one of 6 your agents and distributors regarding the use 7 of trigger latch snap shackles in stunt work, 8 that did or did not occur?</p> <p>9 MR. HARRIS: I am going to object to 10 the form of the question in regard to agents or 11 distributors. I'm not sure if you are talking 12 about Port Supply or AMSPEC. Port Supply is on 13 the customer list. AMSPEC is not. It's vague 14 and ambiguous, lacks foundation.</p> <p>15 MR. ROBB: Calls for speculation.</p> <p>16 Q. (By Mr. Thompson) Specifically, sir, are you 17 aware of any fact that would -- let me rephrase 18 this. I am going to ask you about three 19 distributors of Lewmar products. Is Svendsen's 20 a distributor of Lewmar products?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Is Port Supply a distributor?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And is Action Specialists a distributor?</p> <p>25 A. No, sir.</p>

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<p>1 Q. Were they at one time?</p> <p>2 A. I don't believe we had any formal distribution agreement with them.</p> <p>3 Q. That wasn't my question. Distribution agreement or not, were they a distributor of your products?</p> <p>4 A. I don't believe they distributed our products.</p> <p>5 I believe they consumed them, used them themselves.</p> <p>6 Q. Let's start with Svendsen's and Port Supply.</p> <p>7 Are you aware of any facts that or do you know one way or the other whether or not AMSPEC or a representative of a company called AMSPEC had any discussions with Svendsen's or Port Supply about using the Lewmar trigger latch shackle in stunt work?</p> <p>8 MR. HARRIS: Anything in terms of your personal knowledge outside of any discussions with attorneys.</p> <p>9 A. I'm not aware of any such discussions.</p> <p>10 MR. THOMPSON: And again, I believe that the fact that factual information is communicated by attorneys does not make what wasn't privileged privileged, and so I think it's an improper instruction to the witness not</p>	<p>1 A. No, sir.</p> <p>2 Q. Have you made any inquiry with anybody at Lewmar, Inc., about the nature of the relationship that it had with Action Specialists?</p> <p>3 A. No, sir.</p> <p>4 Q. You haven't asked Randy Blanton or anyone who the relationship between Action Specialists and Lewmar, Inc., was?</p> <p>5 A. The only action I have taken is to insure that Action Specialists are off the current customer list.</p> <p>6 (Off the record).</p> <p>7 Q. (By Mr. Thompson) Why did you do that?</p> <p>8 A. I was informed about it.</p> <p>9 Q. Pardon?</p> <p>10 A. I was informed that that was the case.</p> <p>11 Q. Well, why did you take action to see that they were off the list?</p> <p>12 A. Perhaps I should rephrase the answer. I was made aware that they had been taken off the list, so they are not a customer of ours today.</p> <p>13 Q. Okay. And who took them off the list?</p> <p>14 A. Randy Blanton.</p> <p>15 Q. And did Randy Blanton tell you why he did that?</p>
<p>1 to answer.</p> <p>2 MR. HARRIS: I would disagree. Go ahead.</p> <p>3 Q. (By Mr. Thompson) Now, let's talk about Action Specialists. What do you know about the business relationship in a general term between Action Specialists and Lewmar Limited?</p> <p>4 A. Limited or Lewmar Incorporated?</p> <p>5 Q. Okay. Let's start with Lewmar, Inc. They have bought or purchased some products from Lewmar, Inc., some snap shackles and I believe some D-shackles.</p> <p>6 Q. Do you know if they were extended credit?</p> <p>7 A. In the first case they paid on credit card. I believe the second time they had an open account.</p> <p>8 Q. So Lewmar, Inc., to your knowledge extended open account privileges to Action Specialists; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you know of any other written -- do you know of any written documents between Action Specialists and Lewmar, Inc., regarding possibility or regarding Action Specialists' right to resell Lewmar Limited products?</p>	<p>1 A. No, sir.</p> <p>2 Q. Do you know why he did that?</p> <p>3 A. That would be my opinion. I can surmise.</p> <p>4 Q. Okay. And what is your opinion?</p> <p>5 A. Because they are using the trigger latch shackle improperly, for all the wrong uses.</p> <p>6 Q. Do you know when Lewmar, Inc., or anyone affiliated with Lewmar first learned that Action Specialists was using a trigger latch shackle in a way that you believe to be improper?</p> <p>7 A. In the way that it was used in this case, I understand it was only after the accident.</p> <p>8 Q. Okay. And what's the basis of that understanding?</p> <p>9 A. Discussions with other people.</p> <p>10 Q. What other people?</p> <p>11 A. Attorneys, Mr. Gibson, Mr. Townsend.</p> <p>12 Q. Have you had any discussions with Mr. Gibson or Mr. Townsend about that outside the presence of counsel?</p> <p>13 A. We have had general discussions, yes.</p> <p>14 Q. Okay. I want to know about those discussions.</p> <p>15 What have you been told regarding when Lewmar, Inc., learned that -- first learned that Action Specialists was using the trigger latch shackle</p>

<p style="text-align: right;">Page 153</p> <p>1 in the way you believe to be improper?</p> <p>2 A. Lewmar did not know that Action Specialists were 3 using the trigger latch shackle for this purpose 4 until after the accident.</p> <p>5 Q. Okay. And how do you know what outside -- 6 outside discussions with counsel, has anybody 7 told you -- if it's Mr. Gibson, if it's 8 Mr. Townsend, has anybody told you that that was 9 the case?</p> <p>10 A. I have been told that was the case.</p> <p>11 Q. By who?</p> <p>12 A. It would -- I can give you a list of people who 13 it might have been.</p> <p>14 Q. Okay. Let's start there?</p> <p>15 A. Mr. Gibson, Mr. Townsend, Mrs. Watts, 16 Mr. Blanton.</p> <p>17 Q. Anybody tell you how they determined that that 18 was the case?</p> <p>19 A. No, sir.</p> <p>20 Q. So you don't know any of the underlying facts; 21 you've just been told -- as you sit here today 22 you just have been told that Lewmar, Inc., did 23 not know that Action Specialists was using the 24 trigger latch shackles improperly until after 25 the accident?</p>	<p style="text-align: right;">Page 155</p> <p>1 understood that.</p> <p>2 Q. (By Mr. Thompson) They said Action Specialists 3 told Lewmar -- told who at Lewmar, Inc.? Do you 4 know?</p> <p>5 A. It was our representative in California.</p> <p>6 Q. Who is that?</p> <p>7 A. I'm trying to think. Bob -- I can't remember 8 his name.</p> <p>9 MR. HARRIS: I think you have already 10 asked that question as well.</p> <p>11 Q. (By Mr. Thompson) It's your understanding that 12 the Lewmar, Inc., representative in California 13 was told that Action Specialists was using the 14 trigger latch shackle to move props?</p> <p>15 A. Yes.</p> <p>16 Q. Was there any discussion of it being used in any 17 way to move people?</p> <p>18 A. No, sir.</p> <p>19 Q. Not just up and down, but in any respect?</p> <p>20 A. No, sir.</p> <p>21 Q. Was it acceptable to Lewmar, Inc., that the 22 trigger latch shackles be used in moving props?</p> <p>23 A. I would have said it was an extravagant use of 24 the product.</p> <p>25 Q. But it was approved; is that correct?</p>
<p style="text-align: right;">Page 154</p> <p>1 A. Yes, sir.</p> <p>2 Q. What do you understand the improper use to be?</p> <p>3 A. Using the trigger latch shackle to raise or 4 lower an individual from 78 feet, which it is 5 not designed for use lifting or raising people.</p> <p>6 Q. Do you know when Lewmar, Inc., first learned 7 that Action Specialists was reselling trigger 8 latch shackles to AMSPEC or A & M Specialties?</p> <p>9 A. No, sir.</p> <p>10 Q. You don't have any personal knowledge as to when 11 that occurred?</p> <p>12 A. No.</p> <p>13 Q. Do you have any knowledge that would suggest 14 that Action Specialists was using trigger latch 15 shackles to also pull people, even though it 16 wasn't without regard to just raising or 17 lowering; that they were using it in stunt work?</p> <p>18 A. When Action Specialists had discussions with our 19 people in California, they said they were using 20 it to pull props, not people.</p> <p>21 Q. Did those props include people?</p> <p>22 MR. HARRIS: Objection, asked and 23 answered.</p> <p>24 MR. ROBB: He said props, not people.</p> <p>25 MR. THOMPSON: I must not have</p>	<p style="text-align: right;">Page 156</p> <p>1 A. I think the local gentleman took the decision 2 himself. I can't imagine that pulling props is 3 anything that would cause a problem.</p> <p>4 Q. But at least on a local basis it was approved by 5 Lewmar, Inc., that Action Specialists would use 6 trigger latch shackle in that form. Is that 7 correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And of course that is a non-marine application.</p> <p>10 A. Yes, sir.</p> <p>11 Q. I am going to hand you again Exhibit 124. 12 Again, in the heading blocks where it says to 13 and it has Octerman. You do not know who or 14 whether that is a person or a company; is that 15 correct?</p> <p>16 MR. HARRIS: Objection, asked and 17 answered.</p> <p>18 Q. (By Mr. Thompson) Okay. The next line where it 19 says company, what does that say?</p> <p>20 A. Bedrijf.</p> <p>21 Q. Do you know who that is?</p> <p>22 A. I would guess that it has something to do with 23 the mail merge on the computer system.</p> <p>24 Q. What?</p> <p>25 A. I would guess it has something to do with mail</p>

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1	merging.	1	difficult, sir.
2	MR. ROBB: I would object to guess or	2	Q. Well, from another computer system?
3	speculation. I would ask that it be stricken.	3	A. This is our computer system.
4	MR. HARRIS: I don't want you to	4	Q. Well, does Lewmar or Lewmar Inc., to your
5	guess. If you don't know, tell him you don't	5	knowledge have any computer system that would
6	know.	6	allow you to easily pull together a mass mailing
7	Q. (By Mr. Thompson) What is your best estimation	7	to all your customers?
8	of what this is?	8	A. To pull it straight off the mailing system would
9	MR. HARRIS: If you know.	9	be -- I believe, would be difficult.
10	A. I don't know.	10	Q. Well, I don't care whether it comes off the main
11	Q. (By Mr. Thompson) What do you believe that	11	system or whatever system you've got. I want to
12	would be? That is an issue of admissibility not	12	know if there's a way to easily do a mass
13	discovery?	13	mailing to Lewmar, Inc.'s customers?
14	A. I believe it may be connecting with a mail merge	14	A. I don't know.
15	system to pull names and addresses from a data	15	Q. How do you mail out the catalogs?
16	merging base.	16	A. You would have to ask Mr. Townsend.
17	Q. So you believe in a mail merging system that	17	Q. Do you know?
18	that name or something like it would pull in a	18	A. No.
19	whole --	19	Q. Is there any other advertising that's done
20	A. Mailing.	20	beyond the catalogs?
21	Q. A mailing Matrix?	21	MR. HARRIS: Objection. Asked and
22	A. It might have.	22	answered. It is also an area that Mr. Townsend
23	Q. Would it be something that you could determine	23	is designated to speak on.
24	from reviewing the Lewmar computer system who --	24	MR. THOMPSON: All right. I will ask
25	what the mailing group to be if you used the	25	him about it.
	Page 158		Page 160
1	word B-E-D-R-I-J-F?	1	Q. (By Mr. Thompson) What kind of reporting
2	A. That is a Dutch word, so you would have to talk	2	requirements are there for American distributors
3	to our subsidiary in Holland.	3	in terms of sales information? Anything along
4	Q. If we use that -- assuming if we find out that	4	those lines?
5	that's correct, then these are the companies	5	A. In terms of their sales to their customers?
6	that would have gone by using that mailing	6	Q. Yes.
7	merger, that's who would have received this	7	A. No.
8	notice. Is that correct?	8	Q. So you don't know what your distributors do with
9	A. Yes, sir.	9	the product?
10	Q. Now, do you have that capability for all of your	10	A. No, sir.
11	companies or your clients?	11	Q. And have you taken any steps at all to find out
12	A. No. This would be not a local listing.	12	what they do with it?
13	Q. Do you know if Lewmar, Inc., has the capability	13	A. I am not aware of any.
14	of pulling together a mail merge document so	14	Q. And -- well, withdraw that. Would you take a
15	that they can send them a mass mailing to their	15	look at Exhibit 300 again, sir. Is that
16	customers easily?	16	packaging, is that how the trigger latch
17	A. I don't know.	17	shackles are usually sent out?
18	Q. Do you have that internally at Lewmar Limited?	18	MR. HARRIS: I object to the form of
19	A. Yes, we do, sir.	19	the question. Lacks foundation in terms of the
20	Q. I mean, if you wanted -- for instance, if you	20	word usually. What timeframe are we talking
21	will look at Exhibit 304, which lists all the	21	about?
22	customers of Lewmar, Inc., in the United States,	22	MR. THOMPSON: Well, let's start with
23	do you have a mass ability through computer to	23	that particular form of packaging.
24	do a mass mailing to all those customers?	24	Q. (By Mr. Thompson) How long has that been in use
25	A. From this computer system it would be extremely	25	to your knowledge?

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1 A. Again, this is a question you should put to 2 Mr. Townsend. 3 Q. By that answer, do you mean, you do not know? 4 A. I do not know the period this packaging has been 5 used for, no. 6 Q. Has it been used to your knowledge since 1997? 7 A. I don't know, sir. 8 MR. THOMPSON: I have nothing 9 further. 10 MR. BUCHANAN: I have no questions. 11 MR. RUSSELL: No questions. 12 EXAMINATION 13 By MR. WALDECK: 14 Q. Mr. Swales, thank you very much for being here 15 today, and I'd appreciate your patience while I 16 ask you just a few more questions. 17 A. Okay. 18 Q. My name is John Waldeck, and I am an attorney 19 that represents two gentlemen that were involved 20 in assisting in putting on the wrestling event 21 that was held in the United States in Kemper 22 Arena, which is located in Kansas City, 23 Missouri. Some of the testimony that you gave 24 earlier today, I just have some follow-up 25 questions. I'm trying to get an understanding	1 way. Does Lewmar still manufacture Lewmar 2 shackles? 3 A. No, they don't. 4 Q. And that stopped in August of last year; is that 5 correct? 6 A. You need to check with Mark Gibson to precisely 7 when it stopped. 8 Q. And if you would do that during the purpose of 9 my examination, if there is a question that 10 should be directed to someone else, don't waste 11 time trying to guess it. Just say, Mr. Waldeck, 12 would you please direct that to, and I would be 13 happy to do that. 14 A. Okay. 15 Q. Thank you. You also talked a little bit about 16 wanting customers, whether they would be 17 distributors or boat manufacturers, to get 18 authority or need to get authority if they plan 19 to use a shackle for some non-marine related 20 use. Is that correct? 21 A. We sent it out to our subsidiaries, who are our 22 main distributors. 23 Q. I think I understand that, and I guess what I'm 24 trying to drive at is by sending that out, 25 saying you're not supposed to use a trigger
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1 of the difference of some of the product that's 2 involved that you talked about. You talked 3 about Gibb shackles and you also talks about 4 Lewmar shackles. 5 A. Yes, sir. 6 Q. Is there a difference, since you were the CEO or 7 in charge of distributing or selling Gibb's 8 shackle at one time, is there a marketable or 9 noticeable difference in the actual product, a 10 Gibb's shackle versus a Lewmar shackle? 11 A. The look is different. Their operation in 12 relation to the trigger latch shackle is 13 different. While they both have the same 14 function. 15 Q. And if this is not a fair characterization would 16 you please let me know? The Gibb's shackles 17 that you were selling, Gibb had a higher or 18 better market position for those type of snap 19 shackles than did Lewmar? 20 A. Yes, sir. 21 Q. And is that the reason why now the Gibb shackles 22 is the product line that's used as opposed to 23 the Lewmar shackles? 24 A. Yes, sir. 25 Q. Does anyone still sell -- let me try it this	1 latch shackle unless -- for a non-marine related 2 use unless you have authority contemplates 3 somehow that there would be non-marine related 4 uses where you would receive authority to use 5 that product in that capacity. Is that correct? 6 A. There are any number of uses for our products. 7 The latter was not restricted to trigger latch 8 shackles. Any number of our products could be 9 used for things outside the marine industry. 10 Some of them would be perfectly acceptable. 11 Some of them would not. 12 Q. Well, at least in authoring these memoranda and 13 circulating them out to your distributors, 14 Lewmar was at least considering or anticipating 15 that their distributors may come to them and say 16 can I have authority to sell this product or use 17 this product in a non-marine related way. Is 18 that fair? 19 A. Yes, sir. 20 Q. What specifically would be the process? Say, 21 for example, if I am a distributor of your 22 products and I wanted to take a trigger latch 23 snap shackle and send it to someone for a 24 non-marine related use. How would I go about 25 getting that approval that we're talking about?

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<p>1 A. Our subsidiary would by the nature of who was 2 trying to buy it be aware as to whether they 3 were marine business or not. They clearly don't 4 go to Marine or Catalina or the big boat 5 builders and check what they are using the 6 products for. If somebody came along, and 7 obviously they were a non-marine business, then 8 the subsidiary should inquire as to what purpose 9 they want the product for.</p> <p>10 Q. Is there some sort of criteria or system then 11 once they find out it is a non-marine use that 12 allows them to get this authority?</p> <p>13 A. They would -- depends on what the use was. If 14 they are going to use it as a key ring, clearly 15 they wouldn't make a phone call. They should 16 come through to my office, and again depending 17 on what the use was, we would talk to the 18 insurers.</p> <p>19 MR. ROBB: I need to move to strike 20 any reference to insurance or insurers. Under 21 our law, insurance is not a matter that comes 22 into civil litigation, so I need to move to 23 strike it. I apologize for the interruption.</p> <p>24 Q. (By Mr. Waldeck) Under that scenario, who makes 25 the ultimate -- I am going to use, we use it in</p>	<p>1 Q. And are the subsidiary, head persons of the 2 subsidiary, are they expressly directed by 3 Lewmar here in the United Kingdom to forward any 4 information relating to the request for 5 authority?</p> <p>6 A. Yes, sir.</p> <p>7 Q. That's part of the chain of command? They know 8 to pass on that information?</p> <p>9 A. Yes, sir.</p> <p>10 Q. This may not be a question to you, and please 11 tell me if it isn't. My understanding of how 12 that shackle works, if the quick release feature 13 or the release feature of that shackle is never 14 activated, that shackle is supposed to hold 15 closed. Wouldn't that be correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it doesn't matter if that shackle is under 18 load, not under load. It's not supposed to open 19 up unless someone activates the release 20 mechanism. Isn't that correct?</p> <p>21 A. That is correct, sir, yes.</p> <p>22 Q. And as far as the strength of the shackle, its 23 ability to suspend weight or undergo a load, 24 those are questions that I should ask of a 25 different person. Is that correct?</p>
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<p>1 the United States the term "call". Whose 2 decision is it to say yes or no or make the call 3 on that authority?</p> <p>4 A. It would be one of the directors of Aon.</p> <p>5 Q. Are there any written policies or procedures 6 that outline this process we have described to 7 get authority for the uses of product?</p> <p>8 A. Beyond these memorandums, no, sir.</p> <p>9 Q. Is there any record that is kept of any 10 distributors that would contact you, or boat 11 manufacturers, that would contact you where you 12 would memorialize or record requests that they 13 made for the uses of your product that would 14 have to go through this authority process?</p> <p>15 A. Since I have been finance director at Lewmar, I 16 haven't had a single request.</p> <p>17 Q. Do you know if any of your -- if this is the 18 incorrect term, your subsidiary, would it be 19 managers, the person in charge of the subsidiary 20 like in Holland or the United States, have they 21 received any inquiries for authority for 22 non-marine use?</p> <p>23 A. If they have, they haven't forwarded it on to 24 Havant, which would suggest if that have they 25 have been relatively minor uses.</p>	<p>1 A. Yes. You should ask Mr. Gibson.</p> <p>2 Q. Thank you. And likewise if I wanted to ask 3 about the differences in those loads and 4 abilities of a trigger latch shackle versus a 5 plunger shackle, I should also ask Mr. Gibson?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. You provided some testimony about steps 8 that the company had taken to provide notice to 9 the distributors after certain instances 10 occurred which caused the company to have 11 knowledge of uses that were not marine uses. Do 12 you remember that testimony?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And in a memo I believe I saw or heard some 15 language which talked about Lewmar taking every 16 step. Do you recall that language?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is it your testimony that Lewmar has taken every 19 step to inform its distributor of the situation 20 of not selling trigger latch shackles for 21 non-marine uses?</p> <p>22 A. We have notified all our subsidiaries that they 23 should not sell Lewmar product for non-marine 24 purposes.</p> <p>25 Q. And you've done that by sending them a memo. Is</p>

<p style="text-align: right;">Page 169</p> <p>1 that right? 2 A. That's right. 3 Q. Have you ever sent them any letters? 4 A. No. 5 Q. Has anyone from Lewmar's headquarters ever 6 called the list of customers to tell them that 7 personally? 8 A. Are we now talking about the ultimate, the 9 people we sell outside -- 10 Q. Just your subsidiary managers. Have you called 11 them directly, and said do not allow these 12 products to be used for non-marine uses? 13 A. I am not aware if we have or not. 14 Q. Okay. How about any written policies of Lewmar 15 that have been distributed to all of the 16 subsidiary managers saying, do not distribute? 17 A. Again, it's on the memorandum here, the FAX. 18 Q. Does Lewmar have any system in place whereby it 19 checks the customers of the various 20 distributors? 21 A. No, sir. 22 Q. I am referring to the customer list, if you 23 could put that in front of you again, the 24 exhibit that is the customer list. 25 A. Yes.</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. I will do that then. I'm sorry to take up your 2 time on that. 3 Is it Mr. Townsend's job in Lewmar to have 4 knowledge or be responsible for knowing about 5 the subsidiaries' customers? 6 A. Yes. Mr. Townsend is a product manager, so he 7 works between the factory and the sales. 8 Q. Is it Lewmar's intention at any time for a 9 member of the general public to be able to 10 receive their catalog? 11 A. The marine catalogs that we see here today are 12 available at boat shows, so people can walk up 13 to the booth and pick up a catalog. 14 Q. Could I, John Waldeck, call up Lewmar Company 15 and say I'd like to get a catalog? Could I 16 obtain one that way? 17 A. Probably, yes, sir. 18 Q. And have we generally covered, to the best of 19 your knowledge as you sit here today, all of the 20 various written materials that would be 21 available to a member of the public, which would 22 inform them of Lewmar's intention only to have 23 their products used in marine capacities? 24 A. Yes, sir. 25 Q. Is there anything else out there, a document, an</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. We have talked a lot about Action Specialists, 2 which is on the front page, LL 0146. I want to 3 talk to you a little bit about some of the other 4 entries or customers that I see in this listing. 5 Could you turn to page LL 0173, please. 6 A. (Witness complies). Okay. 7 Q. If you go down about seven entries, there's an 8 entry where it says customer name, Pedigree 9 Cats, Inc. What is Pedigree Cats, Inc., if you 10 know? 11 A. I have not the faintest idea. 12 Q. Do you know what a company called Pedigree Cats, 13 Inc., would use your equipment for? 14 A. No, sir. 15 Q. Could you turn to the next page, which is 174, 16 the same prefix, LL 0. I am going to ask you 17 about some other names that appear on this 18 customer list. About the middle of the page, 19 and the easiest way to find it is go up from the 20 entry that starts Rhodex, R-H-O-D-E-X, up to an 21 entry, I'm reading it as customer name Rescue 22 Systems. Do you have any information about 23 Rescue Systems? 24 A. If you are asking a general questions on this, 25 you are probably better with Mr. Townsend.</p>	<p style="text-align: right;">Page 172</p> <p>1 ad, a memo, anything like that that would 2 contain similar information that we haven't seen 3 here today? 4 A. To the best of my knowledge, all of our ads 5 relate to marine uses of our products. 6 Q. Let me shoot the question at you again to make 7 sure I'm understanding. Any documents, 8 advertisement, something in writing that 9 specifically states the products are only 10 intended to be used in marine applications, are 11 there any additional documents that we have not 12 seen today that you have knowledge of? 13 A. I have no knowledge of any others. 14 Q. You talked a little bit about not receiving any 15 requests for approvals, and I do recall your 16 testimony about that you just gave a minute ago 17 to Mr. Thompson about there was approval for the 18 use of pulling props, and that was not a 19 marine-related use. Is that correct? 20 A. That is correct. 21 Q. Do you have any knowledge of any other 22 non-marine related uses besides this pulling of 23 props that we haven't talked about? 24 A. Not for a Lewmar trigger latch shackle, no. 25 Q. And I believe again your testimony was that you</p>

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1	don't have any way to track or verify what a customer is buying a Lewmar related product for, their actual end use. Is that correct?	1 (Recess).
2		2 EXAMINATION
3		3 By MR. SULLIVAN:
4	A. That is correct.	4 Q. Mr. Swales, my name is Kent Sullivan. I
5	Q. Are your distributors permitted to sell to individuals?	5 represent a Mr. Bobby Talbert and a Mr. Matt
6		6 Allmen, both defendants in this action. I would
7	A. A lot of our distributors are in business to sell to individuals.	7 like to ask you just a very few follow-up
8		8 questions.
9	Q. So the customer list that has a number of names, I don't think I saw -- and maybe I am missing it if I did, and maybe I need to ask it of another person, but I didn't see any individual names, Bob Jones, Phil Smith, Pete Thompson, something like that.	9 With regards to the incident involving the bungee jumper, which is referenced initially in
10		10 Exhibit 124, who amongst the three individuals
11		11 that are going to be produced here for
12		12 depositions, Mr. Townsend, yourself and
13		13 Mr. Gibson, would be most knowledgeable about
14		14 that incident?
15	A. Sorry. I misunderstood your question. Lewmar, Inc., will sell to distributors who sell on to the end user, to Joe Public.	15 A. I believe Mr. Gibson.
16		16 Q. All right. We will ask him, then, about that
17		17 incident. Sir, you have in front of you, I
18	Q. Is that somehow different from selling to a boat manufacturer? Isn't that an end user?	18 believe it was referenced initially as Exhibit
19		19 10, the trigger latch shackle?
20	A. No. The end user is the person that buys the boat.	20 A. Yes.
21		21 Q. And then the other item, which I don't think has
22	Q. Okay.	22 an exhibit number.
23	A. Ultimately.	23 MR. WALDECK: 76.
24	Q. Is there any written policies or procedures for what information a distributor of Lewmar	24 Q. (By Mr. Sullivan) Exhibit 76, I'm sorry. And
Page 174		Page 176
1	products is supposed to pass on to an end user, your example Joe Public, when a sale is made of Lewmar products?	1 again how do you reference the stick-like device?
2		2
3		3 A. We would call it a fid.
4	A. No, there is not.	4 Q. I'm sorry?
5	Q. Is there any company requirement in Lewmar for a distributor to specifically tell Joe Public, the end user, that the equipment that you are being sold in an example, a Lewmar trigger latch shackle is to be used only in marine applications?	5 A. F-I-D.
6		6 Q. F-I-T?
7		7 A. F-I-D.
8		8 Q. All right. Can we agree, sir, that there are
9		9 three different ways to open that snap shackle?
10		10 A. Yes, sir.
11	A. We only sell the product to marine customers. You can't just go into Wal-Mart and buy any of our products. So anybody that goes into a marine distributor presumably is going to buy a product for a marine use.	11 Q. All right. And would you please demonstrate
12		12 each of the three methods.
13		13 A. Your finger inside and squeeze.
14		14 Q. When would you contemplate that use being made
15		15 of the trigger shackle to be opened?
16	Q. And is that an assumption that Lewmar is making, that anyone who walks into a marine distributor store is there for the purpose of buying something it use for a marine application?	16 A. You ought to refer questions of use to
17		17 Mr. Townsend.
18		18 Q. All right.
19		19 A. I can show you how it works.
20	A. I'm sure there are cases when that isn't the case, but the vast majority of the time, yes, that is true.	20 Q. All right. What is the second method of opening
21		21 it?
22		22 A. Put the fid in.
23	MR. WALDECK: Sir, again, I appreciate your time. I don't have any further questions at this time. Thank you very much.	23 Q. All right. What is the third method?
24		24 A. To pull the ring, which is quite hard.
25		25 Q. I believe, sir, you did indicate in your earlier

<p style="text-align: right;">Page 177</p> <p>1 testimony that in your mind it would be 2 dangerous to open it in any fashion if under 3 load except using the fid?</p> <p>4 A. Yes.</p> <p>5 Q. Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And what is the danger that exists if you use 8 any method of opening that shackle other than 9 the fid if it's under load?</p> <p>10 A. Okay. Again, you have got to ask Mr. Townsend, 11 but because there is strain between the two, 12 when it opens, but naturally it moves sharply. 13 Anything else around it is going to move 14 sharply, so there is a danger of getting caught 15 by it.</p> <p>16 Q. So the danger of using any other method of 17 opening is perhaps having your hand struck if 18 you are within the range of that shackle?</p> <p>19 A. Yes.</p> <p>20 Q. Flying open; is that correct?</p> <p>21 MR. ROBB: Let me object to the form 22 of the question to the extent that postulates 23 only a marine application, not an improper stunt 24 use. You may answer to any extent you are 25 limiting it to marine application, of course.</p>	<p style="text-align: right;">Page 179</p> <p>1 qualified in your qualifications to answer with 2 regard to the danger of opening that shackle 3 under load in any manner other than using the 4 fid to marine applications?</p> <p>5 MR. ROBB: Same objection to the 6 extent that you are calling him essentially to 7 judge his own qualifications. I don't think 8 that's for the witness, but you may answer if 9 you understand.</p> <p>10 A. This product shouldn't be opened with anything 11 other than the fid when it's under load.</p> <p>12 Q. (By Mr. Sullivan) And are you limiting that 13 answer to a marine application?</p> <p>14 A. I'm not aware that that answer would change for 15 any other application. This is only designed 16 for marine application.</p> <p>17 Q. All right. Sir, I have given to you Exhibit 18 303. It makes reference to Action Specialists 19 as a tech center.</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what that reference refers to, tech 22 center?</p> <p>23 A. No, I don't.</p> <p>24 Q. Am I correct in my understanding, sir, that you 25 basically draw a distinction between a marine</p>
<p style="text-align: right;">Page 178</p> <p>1 Q. (By Mr. Sullivan) Earlier when you gave your 2 answer when you said it would be dangerous to 3 use, I'm sorry, dangerous to open this shackle 4 under load by any method other than using the 5 fid, were you contemplating just a marine 6 application?</p> <p>7 A. Oh, yes. This was only designed for a marine 8 application.</p> <p>9 Q. Your answer was limited to the marine 10 application?</p> <p>11 A. That's correct.</p> <p>12 Q. And no other application?</p> <p>13 A. No.</p> <p>14 Q. You would be unqualified to give any opinion 15 with regards to the danger of opening that 16 shackle in any fashion other than with the fid 17 if it was under load except in the marine 18 application; is that correct?</p> <p>19 MR. ROBB: Object to the form of the 20 question to the extent that he cannot self-judge 21 his own qualifications. That would be for a 22 Missouri court on the basis of his education and 23 training and experience, and to the extent he 24 feels he is qualified, he may answer.</p> <p>25 Q. (By Mr. Sullivan) Do you feel, sir, you are</p>	<p style="text-align: right;">Page 180</p> <p>1 application and a non-marine application? Is 2 that correct?</p> <p>3 MR. ROBB: I object in terms of for 4 what purpose. I presume we are talking about 5 for use of the trigger latch shackle. Didn't 6 state it, but I assume that to be the case.</p> <p>7 MR. SULLIVAN: Yes.</p> <p>8 Q. (By Mr. Sullivan) In using the marine -- I'm 9 sorry. In using the trigger latch shackle as 10 far as applications, you categorize them as 11 either marine or non-marine. Is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And if you are selling that shackle to one of 14 the customers that's listed on the Exhibit 304 15 that you believe to be a marine supplier of 16 product, you don't check any further to see what 17 they actually do by way of use of that shackle; 18 is that correct?</p> <p>19 A. That is correct, sir.</p> <p>20 MR. SULLIVAN: I have no other 21 questions.</p> <p>22 MR. ROBB: I believe it's Lewmar's 23 turn.</p> <p>24 MR. HARRIS: There will be no 25 questions from Lewmar at this point.</p>

<p style="text-align: right;">Page 181</p> <p>1 MR. ROBB: Then I guess that evolves 2 back to us. Could we take one minute and just 3 do a quick change. 4 (Off the record).</p> <p>5 RE-EXAMINATION</p> <p>6 By MR. ROBB:</p> <p>7 Q. Good afternoon, Mr. Swales.</p> <p>8 A. Good afternoon.</p> <p>9 Q. You started out with me, and you got me again, 10 Gary Robb on behalf of the family, and I have 11 some more questions for you if you are ready to 12 proceed.</p> <p>13 A. Okay.</p> <p>14 Q. Now, you are now and have been since the time 15 you came on with Lewmar the finance director. 16 Is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. And, in fact, there is no other finance 19 director. True?</p> <p>20 A. That is true.</p> <p>21 Q. And as the finance director, you are the 22 individual at the company with ultimate 23 responsibility for the commercial aspects of the 24 company, finances and so forth. Would that be 25 correct?</p>	<p style="text-align: right;">Page 183</p> <p>1 your knowledge, in your capacity as the finance 2 director, not what you may have learned in the 3 last several weeks or months but your ongoing 4 knowledge that you have gained in the ordinary 5 course and scope of your business, to the best 6 of your knowledge in that capacity do the United 7 States distributors to whom you sell your 8 product know that it is to be used for marine 9 application only, sir?</p> <p>10 MR. WALDECK: I object to the form of 11 the question.</p> <p>12 MR. THOMPSON: I object to the form 13 of the question. Calls for speculation.</p> <p>14 Q. (By Mr. Robb) You may answer.</p> <p>15 A. Yes. To the best of my knowledge, they know 16 that our products are only to be sold in marine 17 application.</p> <p>18 Q. Now the distributors to your knowledge don't 19 require customers to swear to a particular use 20 of the product, do they, sir?</p> <p>21 MR. WALDECK: Objection, speculation.</p> <p>22 MR. THOMPSON: Same objection.</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. (By Mr. Robb) Now, if they did, you would know 25 about it, wouldn't you?</p>
<p style="text-align: right;">Page 182</p> <p>1 A. The financial aspects, yes.</p> <p>2 Q. And that would be you?</p> <p>3 A. Yes.</p> <p>4 Q. Now, in terms of the financial aspects of the 5 company, that would include the commercial 6 applications of a particular product which you 7 would know the financial implications. Correct?</p> <p>8 A. The financial implications, not necessarily all 9 the commercial implications.</p> <p>10 Q. But as the finance director and the sole person 11 in charge of that aspect for the company, you 12 would have knowledge of the uses and intended 13 uses of a particular product such as Plaintiff's 14 Exhibit 10, the trigger latch shackle. Correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And wouldn't you consider yourself, Mr. Swales, 17 to be sufficiently qualified by reason of your 18 position with the company and your experience to 19 give opinions concerning the proper use and 20 intended use of this product in?</p> <p>21 MR. THOMPSON: Object to the form of 22 the question.</p> <p>23 A. Yes, I do, sir.</p> <p>24 Q. (By Mr. Robb) Okay. Now, Mr. Swales, to the 25 best of your knowledge, and I'm talking about</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. THOMPSON: I object to the form 2 of the question.</p> <p>3 MR. WALDECK: Same objection.</p> <p>4 A. Yes, they do.</p> <p>5 Q. (By Mr. Robb) As the finance director you would 6 know if they did it, right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. So if someone picks it off the shelf of a store 9 that may have purchased it from a distributor, 10 there is no requirement either by the 11 distributor or Lewmar that they swear to a 12 particular limited use of any particular Lewmar 13 product. True?</p> <p>14 A. That is true, sir.</p> <p>15 Q. And Lewmar doesn't and, in fact, can't police 16 the ultimate or final uses of a trigger latch 17 shackle, can it, sir?</p> <p>18 MR. THOMPSON: I object to the form 19 of the question as compound.</p> <p>20 MR. RUSSELL: Asked and answered.</p> <p>21 MR. WALDECK: I object to form.</p> <p>22 Q. (By Mr. Robb) Subject to the objection as if 23 stated at the end of this question, let me just 24 put it to you again so we can have a smooth 25 record. And Lewmar certainly cannot police</p>

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1 every ultimate or final use of a trigger latch
 2 shackle. Correct?

3 A. That is correct, sir.

4 Q. Now, the lawyer for the WWF, Mr. Thompson, asked
 5 you, sir, a few moments ago and asked if you
 6 recall if he asked about whether it would be
 7 lunacy to use a trigger latch shackle in a
 8 bungee jump. Do you recall those questions,
 9 sir?

10 A. Yes, I do.

11 Q. And you felt qualified and are qualified to
 12 answer them, aren't you?

13 A. Yes, sir.

14 Q. Let me ask you, sir, along those same lines as
 15 the WWF counsel asked you. Would it also in
 16 your experience as the finance director for
 17 Lewmar be lunacy to use the trigger latch
 18 shackle to suspend a 235-pound man 78 feet above
 19 the ground?

20 MR. SULLIVAN: I object to the form
 21 of the question.

22 MR. THOMPSON: Same objection.

23 MR. SULLIVAN: Lack of foundation.

24 Q. (By Mr. Robb) Just one second. You may answer.

25 A. I wouldn't use the phrase lunacy, but I would

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1 say it was a totally inappropriate use of the
 2 product.

3 Q. A totally inappropriate use of the product you
 4 say?

5 A. Yes, sir.

6 MR. ROBB: Mr. Swales, I thank you
 7 for your time, for your patience, and on behalf
 8 of the plaintiffs, I have no further questions.

9 THE WITNESS: Thank you.

10 MR. THOMPSON: I have a few follow-up
 11 questions. If you want to just hand the mike to
 12 me, I can do it from here. And I need the
 13 exhibits, please, a couple of them.

14 RE-EXAMINATION

15 By MR. THOMPSON:

16 Q. Mr. Swales, are you aware of any reason why
 17 Lewmar could not have, if it wanted to, have
 18 stamped "marine use only" on those trigger latch
 19 shackles?

20 A. There may be technical reasons why it couldn't
 21 go on. I don't know.

22 Q. Well, actually, in fact, at one point you had
 23 something stamped on both sides. Is that
 24 correct?

25 A. That is correct.

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1 Q. So are you aware as you sit here today of any
 2 reason why the words "marine use only" could not
 3 have been stamped on that trigger latch shackle?

4 A. I'm not aware of any.

5 Q. In Exhibit 124, which was the -- let me pass
 6 that to the witness. Does Lewmar only have one
 7 insurer for the whole company?

8 A. In what respect?

9 Q. Well, in the respect that it references insurers
 10 in Exhibit 124, would that have been Aon?

11 A. Aon are our insurance brokers. We use a number
 12 of insurance companies.

13 MR. ROBB: Excuse, me Bob. I don't
 14 want to interrupt at all, but could I just have
 15 the same continuing objection and the continuing
 16 motion to strike any reference to insurance or
 17 insurers throughout this portion of your exam?

18 MR. THOMPSON: Yes.

19 MR. ROBB: Thank you, sir.

20 Q. (By Mr. Thompson) Do you know if the Exhibit 124
 21 and the non-marine applications memo that went
 22 out with it, Exhibit 125, was provided to
 23 executives at Lewmar Marine, I think, at the
 24 time it was Lewmar Marine, now Lewmar Limited,
 25 prior to it being sent out by your Dutch

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1 division?

2 A. I do not know.

3 Q. You don't know one way or the other?

4 A. No.

5 Q. Okay. Now, are we in agreement that the notice
 6 that was sent out by Helen Holt, who is now Ms.
 7 Watts?

8 A. Watts.

9 Q. On 16 June 1999, and that's Exhibit 246, that
 10 was sent out after Mr. Hart's accident. Is that
 11 correct?

12 A. That is correct, yes.

13 Q. So whoever got -- the only people that received
 14 any notice of the intent of the company to
 15 restrict use of the trigger latch shackle to
 16 marine applications prior to Mr. Hart's death
 17 was through 120 -- Exhibit 124 and 125. Is that
 18 correct?

19 MR. ROBB: Well, I object to the form
 20 of the question to the extent that it ignores
 21 the catalog and terms in the catalog on the
 22 terms and conditions, and I think itself limits
 23 this witness from giving a full and complete
 24 answer and to that extent is improper.

25 Q. (By Mr. Thompson) Let me rephrase to address

	Page 189	Page 191
1	the objection. The only reference of marine use	1 into any such warning where it is self-obvious
2	by virtue of the catalogs is by implication in	2 and an obvious danger and would not normally be
3	that it's a marine catalog. Is that correct?	3 necessary.
4 A.	It is a marine catalog, and there is the	4 MR. HARRIS: I am going to
5	comments in the back, intended use.	5 specifically join in that objection.
6 Q.	And it doesn't list intended uses; it just says	6 Q. (By Mr. Thompson) Subject to the objection, are
7	that you only have a warranty if you use this	7 you aware of any express verbal warning to any
8	product for its intended use, but it doesn't	8 customer?
9	identify what those intended uses are. Is that	9 A. I mentioned earlier to you about the discussion
10	correct?	10 in a meeting. I am not aware of any other
11 A.	Except that it is a marine catalog, so I think	11 written instructions.
12	it is unlikely you would be selling it for	12 MR. ROBB: This was the 1998
13	anything other than a marine purpose.	13 discussion, sir?
14 Q.	Okay. And to that extent it is by implication?	14 THE WITNESS: That's right.
15 A.	Right.	15 Q. (By Mr. Thompson) There was an internal
16 Q.	But not an expressed warning?	16 discussion; is that correct?
17 A.	Correct.	17 A. Yes.
18 Q.	So except for the implication in the marine	18 Q. And so my question is, are you aware of any
19	catalog and the letter that was sent out by the	19 external discussion in which the people that
20	Dutch subsidiary, no one -- well, are you aware	20 were going to buy and use the product were
21	of any express warnings that occurred but with	21 orally advised that they shouldn't do that
22	the exception of the letter sent out by the	22 except in connection with a marine application?
23	Dutch subsidiary prior to Mr. Hart's death?	23 MR. ROBB: I am going to also object
24	MR. ROBB: I object to the form of	24 to the extent it lacks the foundation that he
25	the question to the extent it postulates that	25 may or may not know what an individual
	Page 190	Page 192
1	such a warning would be necessary. I mean, you	1 distributor may or may not have said at any
2	don't need to warn somebody this a lawn mower	2 individual time to any ultimate end user. He
3	not to be used as a hedge trimmer, so to that	3 doesn't have contact with the end user, so I
4	extent it postulates improper contention for	4 think it is unfair. It postulates a set of
5	these set of facts.	5 facts which make it impossible for him to
6	MR. THOMPSON: Move to strike the	6 answer. It is misleading to boot and calls for
7	speaking objection.	7 speculation.
8	MR. HARRIS: Lacks foundation,	8 MR. THOMPSON: The proper objection
9	misleading and confusing. Are we talking about	9 is as to form and --
10	a verbal discussion, written discussion? Are we	10 MR. ROBB: I think those are as to
11	talking about to the Lewmar subsidiaries? Are	11 form.
12	we talking about to the Lewmar customer list?	12 MR. HARRIS: Again, we are talking
13	It's unclear as to who we are talking about so	13 about an area that Matthew Townsend was
14	it is vague and ambiguous.	14 designated to respond to.
15	MR. ROBB: Plaintiffs expressly join	15 Q. (By Mr. Thompson) Sir, are you aware of any such
16	the objection as stated by counsel for Lewmar.	16 oral communication?
17 Q.	(By Mr. Thompson) Sir, let's back that down and	17 A. I am not aware of any communication.
18	do it by category. Are you aware of any verbal	18 Q. Are you aware of any direct written
19	warnings prior -- at any time to users of the	19 communication with any clients other than the
20	trigger latch shackles that they should be	20 Dutch subsidiary in 1996?
21	limited to marine application?	21 A. I am not.
22	MR. ROBB: I just need to interpose	22 Q. Are you aware of any efforts by anybody at
23	an objection to the extent it postulates that	23 Lewmar Limited to follow up and see if the
24	there is some legal responsibility by Lewmar or	24 notice that was provided in 1996 to the Dutch
25	any of its subsidiaries or distributors to enter	25 subsidiary was then provided to the subsidiary's

<p style="text-align: right;">Page 193</p> <p>1 customers?</p> <p>2 MR. ROBB: Same objection as before</p> <p>3 to the extent that the wording of that question</p> <p>4 postulates a legal responsibility on behalf of</p> <p>5 Lewmar where there, under these circumstances,</p> <p>6 would be none. It calls for speculation to the</p> <p>7 extent the witness has not been given any</p> <p>8 indication that he has personal knowledge about</p> <p>9 what distributors may have said to an ultimate</p> <p>10 or end user. And on this record there is no</p> <p>11 situation that Mr. Swales or anybody else on</p> <p>12 behalf of Lewmar has had any contact with an</p> <p>13 ultimate or end user.</p> <p>14 MR. HARRIS: Same objections.</p> <p>15 Q. (By Mr. Thompson) Do you know, sir?</p> <p>16 A. Well, the statement on this note says that it</p> <p>17 was supplied to Holland's agents. Can I just --</p> <p>18 MR. ROBB: Don't interrupt a witness</p> <p>19 once he has begun an answer.</p> <p>20 A. Can I just make one point, that I use the words</p> <p>21 agent and distributors the same. Agent just</p> <p>22 does not have the legal meaning an agent in the</p> <p>23 U.S.A. has.</p> <p>24 Q. (By Mr. Thompson) Do you know if anyone at</p> <p>25 Lewmar Limited followed up to see that that was</p>	<p style="text-align: right;">Page 195</p> <p>1 distributors and agents that sales should be</p> <p>2 limited to marine applications?</p> <p>3 MR. ROBB: Objection, indefinite as</p> <p>4 to time. Go ahead and answer.</p> <p>5 A. I'm not aware.</p> <p>6 Q. (By Mr. Thompson) You are not aware?</p> <p>7 A. No.</p> <p>8 MR. THOMPSON: Thank you, sir.</p> <p>9 MR. ROBB: Let me make sure we have</p> <p>10 on the record everybody has no further</p> <p>11 questions. Mr. Russell?</p> <p>12 MR. RUSSELL: No questions.</p> <p>13 MR. BUCHANAN: No further questions.</p> <p>14 MR. WALDECK: No further questions.</p> <p>15 It's John Waldeck.</p> <p>16 MR. SULLIVAN: No further questions.</p> <p>17 MR. THOMPSON: No further questions</p> <p>18 of this witness.</p> <p>19 MR. ROBB: No further questions on</p> <p>20 behalf of plaintiffs.</p> <p>21 THE REPORTER: What do you want to do</p> <p>22 about signature?</p> <p>23 MR. HARRIS: Send it to me, and I</p> <p>24 will get it to Mr. Swales.</p> <p>25 (The witness was excused).</p>
<p style="text-align: right;">Page 194</p> <p>1 actually done, that that went to the agents and</p> <p>2 distributors?</p> <p>3 A. Beyond the fact that it says so on it, I do not</p> <p>4 know.</p> <p>5 Q. Would you hand me 246, please.</p> <p>6 MR. ROBB: And for the record does</p> <p>7 someone have exhibits -- do you have those there</p> <p>8 handy? I want to look at those. Those are the</p> <p>9 ones that we marked as Plaintiff's 38 -- I'm</p> <p>10 sorry, 29 and 30 and 31 and 124 and 125, 126. I</p> <p>11 just don't want to get them mixed up in your</p> <p>12 stuff.</p> <p>13 MR. THOMPSON: They are all right</p> <p>14 here.</p> <p>15 MR. ROBB: Could I look at those for</p> <p>16 a second?</p> <p>17 MR. THOMPSON: Yes.</p> <p>18 MR. ROBB: Thank you very much.</p> <p>19 Q. (By Mr. Thompson) 246 is the notice that was</p> <p>20 provided to all the subsidiaries after you</p> <p>21 became aware of Mr. Hart's death; is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And are you aware of whether the subsidiaries</p> <p>25 have done anything to provide notice to their</p>	<p style="text-align: right;">Page 196</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 I, , am a citizen of</p> <p>7 , and I reside at</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Subscribed and sworn to before me</p> <p>14 this day of ,</p> <p>15 20 .</p> <p>16 My commission expires</p> <p>17</p> <p>18</p> <p>19 NOTARY PUBLIC</p> <p>20 IN RE: HART VS. WWF, ET AL.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

MARK SWALES
APRIL 10, 2000

Multi-Page™

MARTHA HART, et al., -vs-
WORLD WRESTLING FEDERATION, et al.

1	NOTARIAL CERTIFICATE	Page 197	1	Page 199
2	STATE OF MISSOURI }		2	
3	COUNTY OF RAY } ss.		3	
4	I, SAUNDRA A. MILLER, a Notary Public, do		4	
5	hereby certify that pursuant to Notice, at the law		5	Saundra A. Miller
6	offices of Bryan Cave, 33 Cannon Street, in London,		6	Notary Public State of Missouri
7	England,		7	My Commission expires: February 1,
8	MARK SWALES,		8	2001.
9	came before me and was duly sworn to testify the whole		9	
10	truth of his knowledge of the matters in controversy		10	
11	aforesaid, was examined and his examination then		11	
12	written in shorthand by me and afterwards typed.		12	
13	presentment of the deposition for the signature of the		13	
14	witness was expressly waived by counsel, on the day in		14	
15	that behalf aforesaid; and said deposition is herewith		15	
16	returned.		16	
17	I further certify that I am not counsel,		17	
18	attorney or relative of either party, or clerk or		18	
19	stenographer of either party or otherwise interested		19	
20	in the event of this suit.		20	
21	IN TESTIMONY WHEREOF I have hereunto set		21	
22	my hand and affixed my notarial seal at my office in		22	
23	said County and State, this day of		23	
24	2000.		24	
25	My commission expires February 1, 2002.		25	
1	Notary Public			
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1	IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI	Page 198		
2	AT KANSAS CITY			
3	MARTHA HART, et al.,			
4	Plaintiffs,			
5	vs.	No. CV99-210774		
6	WORLD WRESTLING FEDERATION,			
7	et al.,			
8	Defendants.			
9	REPORTER'S CERTIFICATE			
10	I hereby certify that the original			
11	Deposition of Mark Swales, taken on behalf of the			
12	Plaintiffs, on April 10, 2000, is in the custody			
13	of Gary C. Robb, Robb & Robb, 3900 One Kansas City			
14	Place, 1200 Main Street, Kansas City, Missouri, 64105.			
15	The cost taxed is \$ pending payment			
16	by the Plaintiff.			
17	The cost taxed is \$ pending payment			
18	by the Defendants WWF and McMahon.			
19	The cost taxed is \$ pending payment			
20	by the Defendants Lewmar.			
21	The cost taxed is \$ pending payment			
22	by the Defendant Lift-All.			
23	The cost taxed is \$ pending payment			
24	by the Defendants Williams and Vizzant.			
25	The cost taxed is \$ pending payment			
	by the Defendants Talbert and Allmen.			
	The cost taxed is \$ pending payment			
	by the Defendant Kansas City, Missouri.			

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